Legal Issues in Libraries
3 Credits/Graduate
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Instructor: Tomas A. Lipinski, J.D., LL.M., Ph.D.,
Professor, Indiana University School of Library and Information Science,
IUPUI, Indiana University Purdue University Indianapolis,
tlipinsk@iupui.edu

Class: web-based. Office Hours: By appointment or when my door is open.

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Welcome to Legal Issues for Library and Information Managers. There is much to do, but you will find the course follows a Topic or program approach that will help to keep you on schedule. While you will not be able to learn every aspect of the law relating to libraries but you will leave the course with a strong foundation to continue learning… we’ll dispel myths, practice how to think about legal issues in the library and how to approach and resolve problems of legal risk management in the library and related settings. You will see that the dates given are for presentation and discussion of the topics as indicated. Of course the time between those sessions is when you should review and work with the course materials as listed on the syllabus. As a result you might desire to read ahead as much as possible, and begin thinking about the final project in order to make effective use of the time after instruction begins. We can be a little flexible in the timeline of topics and dates; quizzes are assigned when the material assessed in a quiz has been covered in class.

DESCRIPTION

A detailed exploration of the legal issues arising in various library settings, including basic and advanced copyright, including digital applications and the DMCA, licensing privacy and confidentiality, various aspects of intellectual freedom including access rights and information liability and malpractice.

OBJECTIVES

There are three objectives:

1) to understand the nature and scope of legal problems arising in the operation of the library;
2) to identify the responsibilities that library and information professionals have in executing current law and the opportunities available to effect necessary change; and
3) to evaluate current legal responses to such problems and envision alternative responses, both legal and non-legal, in light of sound information concepts.

COMPETENCIES

By the end of the course the successful student should be able to:

1) express, consistent with professional responsibility, views and opinions concerning the legal problems in the library and information sciences;
2) locate and evaluate primary and secondary legal material regarding legal issues in the library, understanding its value as a professional decision-making resource; and
3) apply existing legal tenets to various library environments and develop practical compliance strategies for those organizations.
• Design and apply policies and procedures that support the selection and acquisition of information resources for particular communities of users
• Manage, evaluate, and preserve physical and virtual collections of information resources
• Uphold ethical and legal standards in acquiring, leasing, preserving, and providing access to information resources

MLIS Program goals and objectives. This course addresses the following two goals of the MLS degree program:

**Develop and Manage Collections of Information Resources:** Uphold ethical and legal standards in acquiring, leasing, preserving, and providing access to information resources; and

**Approach Professional Issues with Understanding:** Understand the social, political, ethical, and legal aspects of information creation, access, ownership, service, and communication.

PREREQUISITES: None.

FORMAT:

The format for each Topic will include the following:

Lecture and discussion.

Primary Legal Materials (provided on the course web site): Cases, statutes and regulations are available for background. Most will be discussed in class so do NOT consider yourself obligated to read each item. When primary legal documents should be read ahead of time the instructor will indicate those most critical of your attention (these are marked in the syllabus with the parenthetical notation in bold: “PLEASE READ THIS CASE”).

Secondary Legal Materials, i.e. readings from the appropriate literature library and legal (provided on the course web site): Additional material on occasion is available for your review.

Supplemental Materials: These are slides, tables, handouts etc. most of which are prepared by the instructor and often form the basis of the content for our class time together. Some statutes and handouts are covered in some detail…

Discussion Questions: These are included and are meant to provide additional focus to the readings, review lecture content, prepare for quizzes, etc. You may discuss the questions on the course discussion board or in class. Questions in class (during synchronous or asynchronous sessions) are most welcome.
EVALUATION

Quizzes 25% (1-4 required, 5 and 6 are extra credit)
Midterm Project 25%
Final Project 25%
Final Exam 25%

SLIS Definitions of Letter Grades

Letter grades have been defined as follows by student and faculty members of the Curriculum Steering Committee and have been approved by the faculty as an aid in evaluation of academic performance and to assist students by giving them an understanding of the grading standards of the School of Library and Information Science.

A  4.0 Outstanding achievement. Student performance demonstrates full command of the course materials and evinces a high level of originality and/or creativity that far surpasses course expectations.

A- 3.7 Excellent achievement. Student performance demonstrates thorough knowledge of the course materials and exceeds course expectations by completing all requirements in a superior manner.

B+ 3.3 Very good work. Student performance demonstrates above-average comprehension of the course materials and exceeds course expectations on all tasks as defined in the course syllabus.

B  3.0 Student performance meets designated course expectations and demonstrates understanding of the course materials at an acceptable level.

B- 2.7 Marginal work. Student performance demonstrates incomplete understanding of course materials.

C+ 2.3 Unsatisfactory work. Student performance demonstrates incomplete and inadequate understanding of course materials.

C- 1.7 Unacceptable work. Coursework performed at this level will not count toward the MLS or MIS degree. For the course to count toward the degree, the student must repeat the course with a passing grade.

D  1.0

D- 0.7

F  0.0 Failing. Student may continue in program only with permission of the Dean.

Grades are assigned by individual instructors based on a combination of student performance measures developed for each course. Student achievement of course objectives is usually assessed through the use of multiple performance measures. For example, a combination of several of the following assessment methods is common: examinations, class participation, written assignments and exercises, research papers, or term projects. Other methods, depending on course content and objectives, may include in-class small-group exercises, oral presentations, field-based projects and field experiences, or case study presentations.
Effective Fall 2010: No course in which a student receives a grade lower than C (2.0) will be counted toward requirements for any SLIS degree. **Any required course on which a grade lower than B- is received must be repeated**; an elective course in which an unacceptable grade is earned need not be repeated, but it may be repeated or another course must be taken in its place. Repeating a course in which the student received an unacceptable grade or taking another in its place does not remove the credit points for that course from a student’s cumulative grade point average. All grades achieved in SLIS courses will be counted in the SLIS and IU GPA. Because a minimum GPA of 3.0 (B) is required for graduation, any grade below B must be balanced by another sufficiently above B to keep the GPA at the 3.0 level.

**Late Submissions** are not acceptable. For each twenty-four hour period the grade will be reduced, by 0.3, e.g., an assignment otherwise deserving a grade of B+ will be recorded as a B.

**Academic Integrity**: This is a basic principle of intellectual life that holds students responsible for taking credit only for ideas and efforts that are their own. Academic dishonesty violates that principle and undermines the bonds of trust and cooperation among members of the university community, and it is not tolerated. Academic misconduct includes cheating, fabrication, plagiarism, interference, violation of course rules, and facilitating academic dishonesty. Students are responsible for knowing what behaviors and activities constitute these different forms of academic misconduct. Penalties and procedures that are applicable when academic misconduct or dishonesty occurs are described in the IUPUI *Code of Student Rights, Responsibilities, and Conduct*. Students should submit their own work or the work of group if applicable to the task. Properly cite all sources. See, [http://www.iupui.edu/~cletcrse/academic_dishonesty.htm](http://www.iupui.edu/~cletcrse/academic_dishonesty.htm) and [http://www.indiana.edu/~code/](http://www.indiana.edu/~code/).

**Discussion and Participation**: Bring your questions to class. Questions are of course welcome at any time! The course content can be challenging and of course important; the goal is to have you understand the material and be able to make independent assessments in the future (though former students get one free phone call!). While the instructor monitors the weekly discussion boards (but not necessarily every day) this serves as more an opportunity to engage your peers.

**Quizzes**: Be sure to always provide an explanation for your response and include reference to legal support where applicable. Monosyllabic answers will not be given credit even if correct! The quizzes are open book of course! Quizzes may be done as a group (2-4 students); submit only one copy for the group, but put the names of all group members on the document. Quizzes 1-4 will be assigned, Quizzes 5 and 6 can be done as extra credit but only to raise a grade on another quiz. Quizzes are due on Fridays to the drop box by 9:00 a.m., eastern time.
Quiz 1: Copyright Basics including fair use and section 108 (Due: 09/21)
Quiz 2: Copyright Advanced: Classroom, DMCA, and other digital issues (Due: 10/05)
Quiz 3: Confidentiality in the Library and the USA PATRIOT Act (Due: 10/19)
Quiz 4: Access Issues: Patron Codes of Conduct, Use of Public Spaces and Fees for Services Issues (Due: 09/19)
Quiz 5: First Amendment and Censorship Basics and in Cyberspace (Due: 11/19)
Quiz 6: Information Torts and Professional Issues (Due: 11/07)

Midterm Project: You have several options. Due date is 9:00 a.m. Monday October 29 to the course drop box.

1) Review commentary on the recent (July 2010) current cycle of Section 1201(a)(1)(C) rule-making: Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies. Analyze and critique the new set of exemptions, as well as those rejected. Offer a substantive critique of those exemptions granted and those denied. (Do not spend time explaining what exemptions were granted and denied other than in the context of your analysis. This is NOT a descriptive paper.

or

2) Analyze, critique and offer modifications to The Freedom and Innovation Revitalizing U.S. Entrepreneurship (FAIR USE) Act of 2007, H.R. 1201 (or its version in the 111th Congress). In addition to amending sections 501 and 504, the FAIR USE Act would amend section 1201, in several significant ways. Amendment to section 1201 was first contemplated in 2002 with the Digital Choice and Freedom Act of 2002, H.R. 5522, 107th Cong. (2002) (proposing amendment section 1201 to allow circumvention of access and use controls when “necessary to make of noninfringing use of the work and to allow trafficking in support of such use, and among other things creating new section 123 allowing for archiving of works in digital form and rendering unenforceable nonnegotiable license terms that restrict title 17 privileges (“limit[s] any of the limitations on exclusive rights”) of users in digital works). Renamed and reintroduced in 2003 as the Benefit Authors without Limiting Advancement or Net Consumer Expectations (BALANCE Act of 2003, H.R. 1066, 108th Cong. (2003); and reintroduced as H.R. 4536, 109th Cong. (2005). Again, do not spend time explaining the provisions, rather assess the negative and positive impact the proposed legislation will have and if it should be amended. This is NOT a descriptive paper.

or

3) Review the work of the Section 108 Study Group. Information is available at www.loc.gov/section108/. The Section 108 Study Group report on library exceptions in the U.S. Copyright is available at: http://www.section108.gov/docs/Sec108StudyGroupReport.pdf. See also, Section 108 Study Group: Copyright Exceptions for Libraries and Archives, 71 FEDERAL REGISTER 7999 (February 15, 2006); and Section 108 Study Group: Copyright
Exceptions for Libraries and Archives, 71 FEDERAL REGISTER 70434 (December 4, 2006). Spend little time reviewing the recommendations (I’ve read the report several times), focus on critique of the assessment and recommendation offered by the Study Group report and where applicable offer well-argued alternative provisions. Offer some sample language that might form the basis of a revised section 108. This is NOT a descriptive paper

or

4) Review S. 2913, 110th Congress, 2d Topic (April 24, 2008) (Shawn Bentley Orphan Works Act of 2008 (or its version in the 111th Congress) and consider whether the solution to the problem of “orphan works” is viable or not. Consider critique the proposal (pros and cons). What alternative proposal/provisions would better address the problem and increase the use of orphan works and why? You may also wish to consult a predecessor report: U.S. COPYRIGHT OFFICE, REPORT ON ORPHAN WORKS (2006). Do not detail the provisions of the bill (I’ve also read this bill many times and have written on it as well) other than to introduce a point of critique, you may and should of course focus on particular language in your critique. This is NOT a descriptive paper.

or

5) Analyze and critique the licensing agreement of your choice, for a product or service of relevance to libraries. Include the text of the license agreement as an appendix, agreements posted on the Internet can change, I need to see the exact document you reviewed in order to make my assessment. In the alternative you can use the dual column approach presented in the example and ignore the specific page length suggestions.

Note: we will discuss the legal basis for the copyright projects as well as licensing during the first several sessions of the class, so you should have some handle on the law underlying these concepts.

For any option, be sure to review briefly, spending most of your effort on thoughtful analysis and critique, be sure to discuss how the law provides a basis for your discussion. Include appropriate legal and scholarly references to your analysis. Suggested length is 8-12 pages of double-spaced 12 point text, excluding footnotes and/or bibliography.

You may choose another option, but must secure instructor approval!

**Final Project:** Choose an actual library. After contacting relevant library staff, draft or review and up-date a library policy of your choice related to the course content. Assess the legal issues raised by the existing policy if applicable and or the situations the policy addresses. Explain the changes (if applicable), inclusions, deletions, etc. Be sure to set your discussion in a legal and perhaps practical or implementation/solution context. Your final submission should include the actual policy as well as your discussion of it per the above guidelines. **Due date is 9:00 a.m. Monday November 26 to the course drop box.**
For any option, be sure to review briefly, spending most of your effort on thoughtful analysis and critique, be sure to discuss how the law provides a basis for your discussion. Include appropriate legal and scholarly references to your analysis. Suggested length is 8-12 pages of double-spaced 12 point text, excluding footnotes and/or bibliography.

**Final Exam:** This is a short scenario-based test of your knowledge of the law. It will be available on the last day of class if not before and as a take-home. This is NOT a group exercise! **Due date is 9:00 a.m. Friday December 7 to the course drop box.**

**Rubric for Examinations Based on Legal Subject Matters**  
(To a lesser extent can be used for the quizzes and as a self-evaluation throughout the semester to gauge your understanding and articulation of legal issues in libraries.)

**Issue identification:**
5 Identifies basic and advanced issues, anticipates potential problems in light of necessary and relevant assumptions, phrases issues in ways that indicate relevant facts and anticipate applicable precedent
4 Identifies basic and advanced issues, phrases issues in ways that indicates relevant facts and anticipates applicable precedent
3 Identifies most basic as well as some advanced issues, but fails to phrase issues in ways that incorporate the most relevant facts or anticipate applicable precedent
2 Identifies most basic issues, fails to phrase issues in ways that incorporate relevant facts or anticipate applicable precedent
1 Fails to identify few if any issues, basic or advanced

**Identification of Law:**
5 Cites relevant or on-point cases and statutes (and regulations) for each issue, cites and observes conflicts of law, trends in the law, or pending legislation where applicable, appropriate use of legal terms of art throughout discussion
4 Cites the majority of relevant or most relevant cases and statutes (and regulations) for each issue, at times cites and observes conflicts of law, trends in the law, appropriate use of legal terms of art, legal standards, etc. throughout discussion
3 Cites relevant or on-point cases and statutes for each issue, attempts to use legal terms of art in discussion, refers to relevant standards, etc.
2 Cites some law and uses legal terms of art, but at times cites irrelevant or less relevant law or misuses legal terms of art, misapplies standards, etc.
1 Cites little or no law, fails to use legal terms of art, standards, etc.

**Analysis of Law or Legal Problem:**
5 Same as 4 below, in addition discussion includes unresolved points within the law, can distinguish relevant from near-relevant scenarios or apply missing facts, argument and
discussion organized in accordance with case (the judicial opinion) or statutory and regulatory schema or structures,
4 Discussion of law and its application to facts is complete for most issues, multi-faceted discussion of facts and law (same facts may raise multiple issues, progressive discussion of main and sub-issues, “if-then” or “if not-then in the alternative”, etc.)
3 Attempts to discuss law as it applies to the facts, but discussion is singular (compare 4 above) or incomplete or unorganized (compare 5 above)
2 Attempts to explain the law but at times is incomplete, does so incorrectly or misconstrues the application of the law to the facts
1 Little explanation of law as it applies to identified facts

Application of Law and Solution:
5 In addition to 3 and 4, anticipates future problems and solutions, offers pro-active legal risk-management or avoidance responses with rationale based on applicable law
4 Same as 3 below and in addition identifies what the proper “legal” behavior should be when at variance with facts or offers corrective action based on applicable law
3 Offers conclusion as to the legality or illegality of the facts at hand and explains why the conclusion follows from the law and facts
2 Offers conclusion as to the legality or illegality of the facts at hand but statement is made with little explanation, conclusion at times clearly erroneous
1 Offers no conclusion as to the legality of the facts at hand

TEXTBOOKS

Circular 21 (available from the U.S. Copyright Office at lcweb.loc.gov/copyright/circs).

BIBLIOGRAPHY (These are not on reserve, but a list of useful items nonetheless.)


Digital Copyright Issues: Gretchen McCord Hoffman, Copyright in Cyberspace 2: Questions and Answers for Librarians (2d ed. 2005); Tomas A. Lipinski, Librarian’s Guide to Copyright for Shared and Networked Resources, January/February 2002 (American Library Association TechSource: Library Technology Reports (Expert Guides to Library Systems and Services) (Volume 38, Number 1)), 104 pages; The Copyright & New Media Law Newsletter for Librarians & Information Specialists (Lesley Ellen Harris, Editor), contact: libraries@copyrightlaws.com.

Distance Education: TOMAS A. LIPINSKI, COPYRIGHT ISSUES IN THE DISTANCE EDUCATION CLASSROOM (2005) (Scarecrow Press, Inc.).


General Issues:


LEGAL ISSUES IN LIBRARIES

Topic 1  Copyright Basics, Fair Use and Section 108


Review 17 U.S.C. §§ 101, 107 and 108. (We will cover these in great detail in class!)

Resources: Is My Use Lawful? Copyright Problem Analysis and Risk Assessment; A Copyright Compliance (Notice) Audit for the Library, School or Educational Entity; Portion Limitations on the Use of Copyrighted Material as articulated in the Fair Use Guidelines and in various Court Cases; and Recent Fair Use Cases (since 1998) and Older Cases of Note.


Discussion Questions:

- Discuss the ways that a library or its employee’s or its patrons might be liable for copyright infringement, what are the defenses available
- Is copying an HBO movie using my DVR ok, what about a CD onto an iPod to play in my car
- Will a contract override my fair use rights, what are the implications of this for libraries
- The purpose of copyright is actually is to benefit the public, can you see this in the materials reviewed thus far (you may base opinion upon personal experience as well), what factors are at work to supersede this purpose
- If a librarian views a patron at the photocopier copying page after page of a book, then asks for $40.00 in dimes, is the librarian under any legal duty to intervene
- Do you see anything wrong with circulating the table of contents of periodicals in conjunction with a library photocopying service
- What do you believe will be the impact of the new law extending copyright duration, is the exception for libraries effective in guaranteeing access for education and research
- Other comments or questions
**Topic 2 Copyright: Classroom applications**

Primary Legal Materials: *Marcus v. Rowley*, 695 F.2d 1171 (9th Cir. 1983); *Chicago School Reform Board of Trustees v. Substance, Inc.*, 79 F. Supp. 2d919 (N.D. Ill. 2000), aff’d in part, vacated and remanded in part, 354 F.3d 624 (7th Cir. 2003).


Resources: A Copyright Compliance (Notice) Audit for the Library, School or Educational Entity.

PowerPoint: Legal Issues Copyright.

Discussion Questions:

- Can a teacher tape off the air and play in class next week a show that aired on cable last night, what about if it was from pay-for-view, if so can it be used next semester
- Can a video that says “for home use only” be shown in the classroom,
- Can a faculty show Titanic in a course on American History (immigration unit)
- Can we make copies of the standardized tests students took last year in order to practice for this year’s round
- Can a music teacher alter individual scores to make them easier or more difficult (depending upon the student) for rehearsal, for the spring recital
- Can a teacher/faculty make a transparency of a chart or table from a book to use in class
- Can the library make several copies of a newsletter to circulate to different departments in a corporation, for staff development purposes in a school or college
- There is a great article on Internet filtering, can a teacher/faculty use it in next week’s class, in next year’s class, can the teacher/faculty make a copy for his or her own file, could a corporate executive or researcher make the same copy for his or her file
- Can a corporation make back up copies of a computer program it owns
- Can a teacher use a multimedia work in school next year, can he or she display it at a conference the year after
- Can a teacher use the Web-whacker program to download an entire web sites to use in the classroom
- How does the TEACH Act affect libraries in educational settings, how does the new law affect the common practices of educators
- Other comments or questions
Topic 3 Other Digital Issues: DMCA and Licensing

Primary Legal Materials: ProCD, Inc. v. Zeidenberg, 86 F. 3d 1447 (7th Cir. 1996); Universal Studios, Inc. v. Corley, 273 F.3d 429 (2d Cir. 2001); Napster decision (239 F. 3d 1004 (9th Cir. 2001); Metro-Goldwin Studios, Inc. v Grokster, Ltd., 380 F.3d 1154 (9th Cir. 2004), vacated and remanded 125 S.Ct. 2764 (2005); In re Aimster Copyright Litigation, 334 F.3d 643(7th Cir. 2003); BMG Music v. Gonzalez, 430 F.3d 888 (7th Cir. 2005); Field v. Google, Inc., 412 F.Supp.2d 1106 (D. Nev. 2006); Lenz v. Universal Music Corp., 572 F. Supp. 2d 1150 (N.D. cal. 2008); Real Networks, Inc. v. DVD Copy Control Association, Inc., 641 F. Supp. 2d 913 (N.D. Cal. 2009).


PowerPoint: Legal Issues Copyright.

Discussion Questions:

- What implications do cases such as ProCD, Corley, Field and Lenz have for libraries
- Is a library responsible for patrons who download copyrighted information in excess of fair use, what about if patrons upload material onto the library bulletin board, could a corporation do this
- What measures could the library take to demonstrate good faith in digital environments
- Can a corporate librarian download an article from ProQuest or WESTLAW, then upload and route it to employees on its email system or make available on its intranet, could a public library or a teacher do this for staff
- Can a library or archive scan photographic images onto its electronic bulletin board for patrons to access, would it make any difference if the board or site is pass word protected or charged an access fee
- What is the difference if we link, in-link or frame part of another web site on the library’s site as part of a book-marking service of helpful sites
- What is the impact of existing copyright law (and recent changes to the law) on the advancement of various digital library and metadata initiatives (potential problems)
- Other comments or questions
Topic 4         Confidentiality in the Library and the USA PATRIOT


PowerPoint: Legal Issues Privacy.

Discussion Questions:

- Is a verbal reference interview a library “record,” what if the librarian takes notes, if it is a record are the contents protected
- What information, if any, could the parent be told regarding the circulation record, the observed reading habits, or the information seeking behavior of their child, is the answer different in a school
- Does the New York statute offer more protection than Wis. Stat. § 43.30 or Illinois (75 ILCS 70/1), could a library reveal circulation information to parents or spouses
- Can a family member pick up a hold item for another family member, what about student retrieval of a faculty request
- If the police came to the library and ask if John Smith is in the library can you answer
- What if the police point to an individual and ask what they were reading or doing in library earlier
- Examine the ALA Policy on Confidentiality and the footnote reference to the ALA Code of Ethics does this change your answer to any of the above questions
- In a post USA PATRIOT Act library, do state library confidentiality statutes still play a role, if so, what is the legal significance of such statutes
- Other comments or questions
**Topic 5  Access Issues: Patron Conduct Codes, Use of Public Spaces and Fees for Services Issues**


Resources: Public Libraries, the Public Forum Doctrine, and the Characterization of Cyberspace.

PowerPoint: Legal Issues Free Speech Access and Content.

Fieldwork: Locate and post to the Topicboard your local public library’s relevant policy regarding use if its meeting room. Do you foresee any legal issues with the policy or your knowledge of how the policy is applied?

Discussion Questions:

- Discuss any experience you may have with “unruly” patrons, what is your library’s planned response
- After reading the *Morristown* case would you be surprised to know that the ALA took the side of the library against the patron, do the guidelines appear harsh in any way
- Would you say the focus in the case is on the patron who wants access, what free speech rights exist to access the library, how did the court reason against these rights
- What limits can libraries place on the use of its public spaces and its patrons
What kinds of services does your library charge for, are these consistent with the Wisconsin of California Attorney General Opinions?

Consider the types of services that a library might offer, next classify each into essential or non-essential. Which can the library charge fees for and which would be against the spirit of the two Wisconsin Attorney General Opinions?

Do you know your local public library’s meeting room policy, what activities does it exclude?

How would the concepts of the meeting room cases be applied to patron use of display cases; what if the local white supremacy group wanted to put up a display of Nazi memorabilia from 1930s and 1940s Third Reich, would the result be the same if the group wanted to include samples of current literature, posters, artifacts, etc.

Other comments or questions
Topic 6     First Amendment and Censorship Basics

Primary Legal Materials: Board of Education, Island Trees Union School District No. 26
v. Pico, 457 U.S. 853 (1982) (PLEASE READ THIS CASE!); Via v. City of Richmond,
ACLU v. Miami-Dade County School Board, 439 F. Supp. 2d 1242 (S.D. Fla. 2006),
vacated and remanded, 557 F.3d 1177 (11th Cir.), cert. denied 130 S. Ct. 659 (2009);
Tempe Union High School District, 158 F. 3d 1022 (9th Cir. 1998); Sund v. City of 
Wichita Falls, Texas, 121 F. Supp. 2d 530 (N.D. Texas 2000); Gay Guardian Newspaper
Stats. §§ 944.21; 948.11; 948.12. (Locate corresponding statute from your home 
jurisdiction on obscenity, indecency and child pornography, parallel Illinois statutes are 
available as well.)

Fieldwork: Students may want to review relevant ALA policy statements on intellectual 
freedom, these are located in most recent edition of the INTELLECTUAL FREEDOM 
MANUAL published by the Office for Intellectual Freedom of the ALA. Compare your 
local public collection development policy.

PowerPoint: Legal Issues Free Speech Access and Content.

Discussion Questions:

- What distinctions did the United Supreme Court draw in the Pico case between 
school libraries and public libraries and curriculum content decision
- The lead plurality opinion focused upon the motive behind a removal or decision not-
to-collect, what evidence might there be of tainted motives in either a public, 
avademic or school library
- If censorship occurs in the selection process, who is the likely culprit, and how would 
such instances receive legal review
- Can schools adopt rating systems for use in its curriculum, could a public library do 
the same (review ALA position of use of third party rating systems or expurgation of 
ratings and labels from materials)
- What do the Pico and Case decisions suggest about the role of collection or 
reconsideration policies, what did the library board or administrators do wrong in 
each case
- Do patrons or students have a right not to be offended by materials
- What impact if any does the Monteiro decision have for using or collecting 
controversial materials that some may not find quite “PC” in libraries or schools, why 
is there legal support for a broad array of materials in both public and school libraries
- Do patrons have a right to remove materials from libraries, do patrons have a right to 
add materials to libraries through gift or request
- Other comments or questions
Topic 7 Free Speech in Cyberspace: Filtering and other Issues


Resources: Federal Legislation Regulating Speech on the Internet and the Supreme Court; and Public Libraries, the Public Forum Doctrine, and the Characterization of Cyberspace.

Fieldwork: Locate your local public library’s policy on Internet use, what limits are on the access of controversial material, if filters are used, is the policy consistent with the Supreme Court’s interpretation of the CIPA statute re the disabling request procedure?

PowerPoint: Legal Issues Free Speech Access and Content.

Discussion Questions:

- How did the Loudoun court characterize the use of filtering software, i.e., more like a book removal or more like a decision not to purchase, what were the court’s reasons, do you agree or disagree, is there another analogy, ala-Pico that is better representative of the selection process
- How is collection development characterized by the various justices in the CIPA decision, who seems to have the better handle on the practices of librarians
- Does someone else’s right not to be offended, supercede my right to access dangerous or explicit information, does a review of the Morristown case (behavior interfering with others’ right to use library) and the fees for services AGs (is Internet access essential or part “inherent information-providing function” of the library) alter your opinion on the matter
- What would be the legal response if a parent sued the library for NOT using filters, i.e., that their child was exposed to harmful or dangerous material at taxpayer expense
- Are the results of the Urofsky and Loving cases consistent with the First Amendment principles discussed thus far, what differences (if any) are there between higher versus K-12 environments and the regulation of accessible content, and between students of higher education versus faculty, does the law allow for these differences, how do these cases impact upon your or my right to view offensive material in a campus or academic library setting
- Can a library decided not to filter but have a policy that uses staff monitoring to prohibit patrons from accessing controversial sites, would this be consistent with the Supreme Court’s plurality decision in the CIPA case
- Is such a “tap on the shoulder” monitoring better, worse or the same as a removal or more like a legitimate selection decision
- Other Comments or questions?
Topic 8       Defamatory, Erroneous and Dangerous Information


PowerPoint: Legal Issues Tort; and Video Game and other Regulation.

Additional cases for the curious:

» *Winter v. G.P. Putnam’s Sons*, 938 F.2d 1033 (9th Cir. 1991) (Encyclopedia of Mushrooms: incorrect identification of poisonous mushrooms, let’s do some shrooms!).


» *First Equity Corp. v. Standard & Poor’s Corp.*, 869 F.2d 175 (2d Cir. 1989) (Corporation Records: We make money the old fashioned way, we steal it! It’s a good company, really!).

» *Gale v. Value Line, Inc.*, 640 F. Supp. 967 (D.R.I. 1986) (Value Line Convertibles: we forgot to tell you about one little item.).
» Birmingham v. Fodor’s Travel Publications, Inc., 833 P.2d 70 (Haw. 1992) (Fodor’s Hawaii 1988: surf the Big Kohuna! That’s a narley wave Dude! Wipeout!).


» Libertelli v. Hoffman-LaRoche, 7 Media Law Reporter 1734 (S.D.N.Y. 1981) (Physician’s Desk Reference: inadequate Valium warning, repeated use of this drug may be addictive, duh!).

» Cardozo v. True, 342 So. 2d 1053 (Ga. 1981) (Trade Winds Cookery: you’re gonna cook that (Dasheen plant) first before you eat it, aren’t you?).


» Roman v. New York, 110 Misc. 2d 799, 442 N.Y.S. 2d 944 (Super. Ct. 1981) (Birth-control pamphlet from Planned Parenthood, nine months later reader discovered it was not very well planned.).


Discussion Questions:

- Is a online service provider responsible for defamatory messages posted on its service
- Is a bulletin board a periodical or newspaper for purposes of the libel laws
- Is a web site a periodical for similar purposes
- Is a library responsible for defamatory messages posted on its web site or bulletin board by patrons, is a school responsible for postings by its students
- Can a librarian be sued for defamatory postings made on a listserv
- When, if ever, are publishers responsible for erroneous or dangerous materials they produced, at what point are libraries responsible if such material is added to the collection, what if instead of a book, the information was accessed from an online database, are there other factors that might place liability on the publisher or the library
In what ways could it be argued that a library is a content supplier or editor of material, should the library be liable for defamatory or erroneous postings or dissemination?

What “statement,” if any does the library’s decision to purchase make about the veracity or quality of a work, how does your answer square with the principles of collection development?

Other comments or questions

Case Study: Review the Paladin Press catalog, are that any items in the catalog that your library might want to purchase? Are there other items that under the Rice case would give rise to publisher liability, would a library be liable if it chose to add the work to its collection?
Topic 9  Professional Issues: Malpractice and Information Liability


PowerPoint: Legal Issues Tort; and Video Game and other Regulation.

Discussion Questions:

- What are the legal criteria for writing a legally actionable book review?
- What was problematic about the ranking process employed by the AIP, how was the ranking used caused problems with the fair trade laws?
- When if ever can erroneous information in the library give rise to liability, should it ever be liable?
- What criteria must be present before liability can exist against a librarian, does this depend on library type, in what circumstances could librarians be liable?
- If the correct information is available, but the library fails to acquire it, is the library responsible, should it be, does it depend on the type of library?
- If the correct information is available in the library, but the librarian fails to access it in some way or provides the wrong answer (outdated or superceded, for example), if the librarian or library responsible, is the librarian or library responsible, should he/she/it be?
- Is the library required to use the most up-to-date technology available (akin to the computer tort cases)?
- Can/should a librarian be able to assess the quality of materials and resources in the collection and relay that information to patrons, i.e., can you recommend which encyclopedia set is best for children in junior high?
- Can you think of situations in which a librarian’s “incorrect” response would cause injury, and when reliance on that incorrect response might be deemed by a court to be reasonable, think of your own experience in the library (from either side of the reference desk)?
- Finally, what might be the legal impact of professional licensing requirements for librarians?
- Other comments or questions
Quiz 1: Copyright Basics, Fair Use and Section 108

1. Would it be a fair use (consider section 107 alone) for an instructor in a non-profit educational setting to scan and upload a complete copy of a standardized practice test onto the school’s distance education website so that students can practice for the actual test? Under what conditions if any, might this be a fair use?

2. Under section 107 or section 108 (consider both), and including the legislative history of either section, is there anything problematic with a for-profit corporation that routes photocopies of the table of contents of journals to which it subscribes to its employees, what if the corporation then makes copies of the articles upon request for those employees? Could the same corporation scan and load a copy of a monthly newsletter onto the corporate intranet, again making a similar assessment under section 107 and 108 and each section’s legislative history?

3. Under either section 107 and 108 (make both assessments), could a non-profit library make a digital copy of a small portion of a VHS and place it on a shelf-reserve, what about making the clip available in an e-reserve?

4. Under section 108, can a library make a copy of a deteriorating out-of-print novel or make a copy of a deteriorating cassette tape? Would it matter if there were an e-book version of the novel available? The CD version of the tape is now also available.

5. Under section 108, could a library make a copy of book for a patron, the book is out of print. Could the library make a copy of a VHS tape for a patron? What about making a copy of a small portion of the VHS tape for an interlibrary loan?

6. Under either section 107 or 108 (and ignoring the section 1201 issues for now) could a library make a back up copy of new DVD just case they might get damaged? Could it transfer old Beta tapes to VHS (the tapes are playable, but nobody uses BETA anymore)? Neither Beta nor VHS versions are available anymore, but the movie is out on DVD.
Quiz 2: Copyright Advanced: Classroom, DMCA, and Licensing

1. Ignoring the section 1201 issues, under section 110, can an instructor make available to distance education students the contents of an entire DVD? Under section 112, could the instructor digitize a small portion of the VHS version to place on the course web site? What about storing a complete copy of the movie or program on the institution’s distance education server so that it is easier to access the small portion when needed in the future?

2. Under section 110, can the school show a Disney video to keep toddlers busy while parents visit with teachers on “parent” night? Could the French Club watch Les Miserables starring Jean-Paul Belmondo during its monthly meeting?

3. Can the pom-pom squad play a U2 song over the PA during its dance routine during the state basketball playoffs? What if the both the game and the half time entertainment are broadcast on the local access cable channel?

4. What do you make of the following clause found in a licensing agreement your library is being asked to sign, provided by a database content provider of full-text journal articles: “PROHIBITED USES. Content may not be further distributed in electronic form, except to authorized users.” Where authorized users includes, faculty, staff and students but not members of the public or persons at other institutions?

5. Under section 512 what obligations does a college or university have when it receives a qualifying “take-down” notice under subsection (c), in terms of notifying the student who is the target of claimed infringing behavior?

6. Is it possible to take a 30 second clips from DVD versions of several different films (the DVD is protected by CSS and you have RealDVD available) that have library connections, e.g., Party Girl where Parker Posey discusses how she used the Dewy Decimal system to organize a friend’s record collection etc., using the clips in power point presentation for a library foundations class? Could a SOIS student do the same, for the same purpose?

7. Could the library circumvent an access control on a historical series consisting of old news clips, radio broadcasts, etc. from the 1920s and 1930s? The series is produced by Time-Life, Inc. but is made up of content originally produced by the federal government. The library is considering purchasing the series.
Quiz 3: Confidentiality in the Library and the USA PATRIOT Act

Review your home state (or state of your choice) library confidentiality statute. Assess the statute (positive and negative). How would you amend the statute and why? Draft those changes into the existing statute and describe how the new version would operate differently in the future. What further implementing policy considerations would you recommend including and why? (Indicate the state statute you are using and include the text of the statute in your answer if using a state other than Illinois or Wisconsin or Indiana.)
Quiz 4: Access Issues: Patron Codes of Conduct, Use of Public Spaces and Fees for Services Issues

You are the new director of a public library. The library makes available its display cases (one located in the lobby entrance to the library and the other placed at the end of one of the stacks in the non-fiction section) and its wall-mounted bulletin board (approximately 5 high by 8 or 10 feet long and located inside the library near the circulation desk) for use by patrons. There is no written policy governing use of either cases or board. The practice has been to allow patrons to reserve either of the two display cases for a week at a time (there is a sign-up sheet at the reference desk) and to post items on the bulletin board which is then cleared at the end of each month.

The following events recently occurred at your library. A patron complained that the content the Pro-Life Sisterhood placed on the bulletin board was disturbing and should be prohibited from being posted in the future. The content included graphic color images of aborted fetuses (or babies as your political or religious affiliations may dictate). Second, a group calling itself the White Intellectual Supremacy Expression (WISE) has reserved both display cases for the weeks of Juneteenth Day and anniversary of Kristallnacht, its content (text, images and objects) will include what might be labeled “hate speech” targeting various racial, ethnic and religious groups. However the content does not constitute incitement. Patrons/groups who have signed up for other weeks are complaining that the WISE displays should not be allowed. In conversations, both the Pro-Life Sisterhood and the White Intellectual Supremacy Expression have indicated that each believes it has a First Amendment right to display on the board and in the cases the content in question.

In preparation of an upcoming library board meeting your task is to review the law relevant to display cases and bulletin board use in public libraries, to make an assessment of the current situation in light of the above facts. Do these patrons have free speech rights, if so, are the rights unlimited, if not, what constitutional limits could be imposed on use of such spaces in public libraries. What is the nature of the forum created by the library at this time and what options are available to the library that could withstand legal challenge? Include in your discussion, what course of action the library should adopt in future situations, i.e., what procedures and conditions should be imposed if any on use of display cases and bulletin board space that would be sensitive to free speech concerns, minimize controversy and assuage concerns of the disturbed patrons. Finally, discuss how these procedures and conditions would be incorporated into a written policy that would withstand constitutional challenge.

In making these assessments be sure to discuss the nature of the forum involved, the characterization of the “regulation” if any imposed (what restrictions will the library adopt in it proposed policy) and assess how the policy would be applied to facts at hand, i.e., if the regulation is content based or content neutral, the speech is within or outside of the limits of the forum, etc. would the policy survive judicial review.
Quiz 5: First Amendment and Censorship Basics and in Cyberspace  
(Tentative, may not be assigned)

1. According to the courts which is worse removing a book once selected, or deciding not to purchase and avoid controversy? What are the practical implications of this library, archive and information practice?

2. Is it illegal for a library to have obscene or indecent content in its collections? Under the wording of the Wisconsin statute (or use another corresponding state statute) is having the item in the collection the same as distribution or exhibition (display)? Even if it is, is this a problem for the library?

3. Is it illegal for a public school or library board to remove a challenged item?

4. Is there a legal basis for keeping material that is not quite “PC” in the public school or community library? Recall the ACLU v. Miami-Dade County School Board, 439 F. Supp. 2d 1242 (S.D. Fla. 2006); and Monteiro v. Tempe Union High School District, 158 F. 3d 1022 (9th Cir. 1998) decisions.

5. Is the standard for obscenity or indecency based upon local, state or national mores?

6. Under the CIPA decision, can an adult in a public library still access material blocked by the library’s filtering software, even content that is sexually explicit and for which the patron has requested the filter be disabled?
Quiz 6: Information Torts and Professional Issues
(Tentative, may not be assigned)

1. Is a library considered a publisher (or re-publisher) or a distributor of information, and why is the distinction important? Is the provider of an online database a “publisher” in the traditional sense of a newspaper publisher? Is a bulletin board or web site a “periodical” for purposes of state defamation or misappropriation law, in Wisconsin, in New York? And what is one likely legal analysis of the nature of postings made by third parties such as patrons or other “publishers” in places like a bulletin board, website, blog, wiki, etc.?

2. Could the library load or link to sexually explicit material (could be the official web site of the Joy of Sex author/publisher) on/from its web site without legal repercussion? Is the library legally responsible if patrons post obscene material on the library’s chat room, website, blog, wiki?

3. What is the library’s responsibility to remove material held to be defamatory or otherwise considered dangerous, such as an issue of the Star or the Hit Man book? Are librarians responsible for the errors contained in books or other materials located in library collections? And for errors on websites linked from the library web site?

4. Are librarians considered professionals under existing legal standards, what difference does this make? Under what theory could a librarian be sued for providing incorrect information or directing a patron to the wrong sources of information? Are librarians in Illinois protected if the information results in physical harm to patrons?