

**University of Illinois at Urbana-Champaign  
Graduate School of Library and Information Science**

**Information Policy  
LIS 590IP  
LEEP Summer Term, 2008  
(June 11, 12, 16, and 23, and July 7, 14, 21, and 28, 2008)  
4 credits**

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## **INTRODUCTION**

Welcome to Information Policy! This is somewhat of new course. Though “on the books” here at GSLIS and taught before by others the instructor was given the charge to execute a current class on the topic as part of the CAS in Digital Libraries. However, broader issues relating to information policy are of too great significance to ignore the bigger picture of the cluster of information policy issues affecting society in general, e.g., privacy and technology, censorship and other regulation of ideas and expression, etc. So the course is evolving to include those issues as well as seek specific focus on the information law and policy related to the development of digital libraries in the United States from both a conceptual (law and policy) as well as a practical (implementation) framework.

There is much to do, but you will find the course follows a session or program approach that will help to keep you on schedule. This course is designed as a seminar. After an initial two days of instructor-facilitated instruction and discussion of the legal infrastructure and policy development of basic issues in information policy as those issues relate to digital libraries, emphasis shifts to expanded discussion of the initial topics that include basic documents of policy formation as well as critical review of related concepts. The instructor will also continue to act a resource and participate in discussion as appropriate. You will see that the dates given indicate when the material will be covered in the class sessions. A number of the readings are challenging by some standards; it is suggested that you begin reading and reviewing the material as soon as possible.

Strategies for campus sessions June 11 and 12, 9:00 a.m. – 5:00 p.m.: The Campus session is an intensive two-day instructional seminar on the basic law and policy issues across themes related to copyright, with special focus on the emerging reform of section 108 that may prove to be the most significant congressional attention to libraries and archives in many years. It is difficult to begin analysis of present policies, assess specific issues or advocate change without a basic understanding of the legal infrastructure surrounding these issues. Law and policy are intertwined in a cycle, with each driving the other to an extent.

Strategies for the Monday LEEP sessions June 16, and 23, and July 7, 14, 21, and 28, 3:00 – 5:00 p.m.: The LEEP sessions offer the opportunity to focus on several specific issues or challenges across the three themes of intellectual property, content regulation, and privacy and technology. The issues are current and critical. The readings in support of each session include a policy document and/or a critical review of the issue from the secondary literature. There is also an opportunity to review background material from various perspectives in “law and economics” and “philosophy”, two fruitful avenues of analysis and critique. The synchronous LEEP sessions are reserved for discussion and for additional instructor input to any specific questions students desire to pose. Emphasis will be placed on evaluation of attitudes (policy, proposal, critique, etc.) as expressed in the documents across the various topics.

The assignments are structured to accomplish three goals: To increase analytical skills in review of “information policy” content, to gain experience with policy implementation in practice, and to encourage students to become advocates for change. Different assignments emphasize the various goals.

**PREREQUISITE:**

None.

**DESCRIPTION**

This course provides an opportunity for students to explore various aspects of information policy. The readings offer an overview and framework of issues in information policy. A variety of methodological approaches are reflected in the readings for the assessment of information policy issues.

The focus of issues relating to the ownership and control of information is copyright. It invites a critical assessment of our major information property system: information ownership and control in the marketplace. The implications of licensing are also discussed.

A second area of focus is the government's role in shaping the content of available in digital spaces. Current debate over government's role in the public information space is discussed; especially with respect to issues of free speech and access to information (privacy and "dangerous" information) and the conflict (or challenges) these policies may create for the professional responsibility of librarians.

Finally, issues of privacy and technology are continuing to evolve, in addition to USA PATRIOT Act reauthorization issues, new technologies such as RFID continue to pose challenges for policy makers and their constituents.

## **OBJECTIVES**

There are several course objectives:

- 1) to acquire a basic knowledge of the information policy process, including some exposure to methodological and evaluation criteria;
- 2) to evaluate and assess the existing regulation of information;
- 3) to understand the relationship between law and information policy and understand how legislation shapes information policy (and vice-versa);
- 4) to identify current issues in information policy affecting the development of digital libraries, understanding the origin and possible policy responses; and
- 5) to recognize the impact that information policy decisions have upon libraries and other information organization, and to society at large.

## **COMPETENCIES**

By the end of the course the successful student should be able to critically evaluate report and scholarly literature in the area of information policy. This includes the ability to identify current issues in information policy, analyze the various aspects of the issue using a particular research perspective, and offer and assess concrete policy responses.

## **FORMAT:**

Class sessions are designed, in as much possible, as individual topic modules. A seminar approach is used. Discussion of policy documents and critical readings are the basis of our discussion.

## EVALUATION

Participation	20%
Essay Assignment I	15%
Essay Assignment II	15%
Final Project (The Policy Process: Advocating Change)	50%

**Participation (20%):** As graduate students you are expected to demonstrate familiarity with assigned and additional readings where relevant.

Campus sessions: in order to maximize our time together on campus, please prepare. See details under the OUTLINE OF TOPICS AND READINGS.

There should be a discussion board available for additional comment. The space is reserved for discussion of the class readings, lectures and power points and other related topics as needed; focus is placed upon synthesis and demonstrating an understanding of the conceptual nature of the material with specific application to libraries, archives and other information settings through case studies, comparisons of theory to practice (connect versus disconnect), analysis of various policy against an evaluate rubric (e.g., the readings at times provide information from which this can be devised), etc. Please, please, I beg you, no idle chatter, useless musings or “me too” comments, rather contemplate first then offer thoughtful and reflective comment or question. Some readings are conceptually unfamiliar and challenging. Effective participation will likely require some work on your part, perhaps more than in other courses: A guide might be to post a question or two each week and offer several comments, you needn’t question or comment on every reading or every other question/comment, rather strive for reflection and synthesis across readings/comments. It is quality not quantity the counts here!!!

LEEP session participation: The instructor has been informed that GLIS has the capacity to accept input from up to four phone lines, so the instructor would like to run the LEEP sessions as a conversation between three students and the instructor. Students are responsible for leading the discussion, posing questions, etc. There will be opportunity to sign up during the on-campus days (three students per LEEP session) for the weeks/topics. Students not leading the discussion should nonetheless “attend” and post comments and questions to the discussion leaders and the instructor.

**Essay Assignments (15% and 15%):** The two essay assignments offer students the opportunity for extended reflection on the topics and readings. Students will have a choice of questions from which to select one question. **Due Monday July 7 (I) and Monday July 28 (II), by noon.**

**Final Project (50%):** Here is a chance to participate in an upcoming policy-making process critical to the future of information policy or the development of digital collections and libraries in the United States. Be sure to spend most of your effort on thoughtful analysis and critique, discussing how the underlying policy and shortcomings of the existing law provides a basis for your discussion and the solutions you propose. Include appropriate legal and scholarly references to your analysis where appropriate. Suggested length, excluding footnotes and/or bibliography: 10-15 double-spaced pages in Times New Roman at 12 point. **Due Monday August 4, by noon.**

Options include answering one of the following questions (to some extent each will be discussed in class):

Section 108 Study Group: Reflect on the proposed amendments to section 108. Offer critique and sample statutory language of several subsections.

Section 1201 Rule Making: Review commentary on the recent cycle of Section 1201(a)(1)(C) rule-making: 71 FEDERAL REGISTER 68472 (November 27, 2006): Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies. Consider the current set of exemptions, as well as those rejected. What exemption would you propose next time and why (2009)? Be sure you satisfy the statutory and regulatory standards for the exemption in terms of procedure and substance?

Reform of section 1201 anti-circumvention rules, among others: Critique (what's good and what's bad about) the H.R. 1201, the Freedom and Innovation Revitalizing U.S. Entrepreneurship Act of 2007 (FAIR USE Act of 2007), 110th CONGRESS, 1st Session (February 27, 2007). How should it be changed and why, offer sample/proposed statutory text.

USA PATRIOT Act Reauthorization: In light of the *Doe v. Gonzales*, 500 F.Supp.2d 379 (S.D.N.Y. 2007) decision, how should Congress further amend 50 U.S.C. § 1861, 18 U.S.C. § 2709, and 18 U.S.C. § 3511) and why.

Based on the case law and social science literature is S. 2126 (Family Entertainment Protection Act), 109th Congress, 1st Session (December 16, 2005), constitutional? Could legislation ever be drafted that would pass constitutional muster, if so, what would that legislation look like (draft a sample).

Other projects are possible as well as variations on the ones proposed here, but subject to instructor approval. I am all ears!

## TEXTBOOKS

None.

## OUTLINE OF TOPICS AND READINGS: Campus and LEEP

### **June 11          Understanding the law and policy of copyright: basic concepts and Campus          fair use (Section 107).**

Please come prepared to discuss trends and issues relating to basic copyright principles, especially fair use and in particular how these issues might relate to archiving and digitization practices of libraries. To familiarize yourself with some of the legal concepts underlying a series of lectures on copyright are provided for your review, you may also want to consult basic readings on copyright law and fair use. A good source is Kenneth D. Crews, *Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions* (2d ed. 2005) (ALA).

- 9:00 Introduction and course administration
- 10:00 Basic Copyright Issues
- 11:00 Basic Copyright Issues, continued
- 12:00 Lunch
- 1:00 Fair Use
- 2:00 Archiving and digitization issues related to fair use
- 3:30 *Cambridge University Press v. Patton*
- 5:00 Conclude

Please read the following materials in anticipation of the on-campus sessions and please bring several questions related to the readings for discussion and clarification:

*Field v. Google, Inc.*, 412 F.Supp.2d 1106 (D. Nev. 2006).  
*Perfect 10 v. Amazon.com, Inc.*, 487 F.3d 701 (9th Cir. 2007).  
*A.V. v. iParadigms, Ltd.*, 2008 WL 728389 (E.D. Va. 2008).

Jonathan Band, *Google and Fair Use*, 3 JOURNAL OF BUSINESS AND TECHNOLOGY LAW 1 (2008).

Elisabeth Hanratty, *Google Library: Beyond Fair Use*, 2005 DUKE LAW & TECHNOLOGY REVIEW 10.

*Cambridge University Press v. Patton*, 1:2008 cv01425 (N.D. Ga. April 15, 2008), available at <http://www.publishers.org/main/PressCenter/documents/GSUlawsuitcomplaint.pdf>.

WILLIAM M. LANDES AND RICHARD A. POSNER, *THE ECONOMIC STRUCTURE OF INTELLECTUAL PROPERTY LAW* (2003) (Chapter 2, How to Think about Copyright, pages 37-70, skim Chapter 4, Basic Copyright Doctrines, pages 85-123, and Chapter 6, Fair Use, Parody, and Burlesque, pages 147-165, Chapter 8, The Optimal Duration of Copyrights and Trademarks, pages 210-253).

**June 12            Orphan Works and Section 108 issues**  
**Campus**

Please come prepared to discuss trends and issues relating to basic copyright principles, especially fair use and in particular how these issues might relate to archiving and digitization practices of libraries. To familiarize yourself with some of the legal concepts underlying a series of lectures on copyright are provided for your review, you may also want to consult basic readings on copyright law and fair use. A good source is Kenneth D. Crews, *Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions* (2d ed. 2005) (ALA).

- 9:00 Solving the problem of Orphan Works
- 11:00 Section 108 reform
- 12:00 Lunch
- 1:00 Section 108 reform, continued.
- 3:00 Time permitting: a look ahead to other issues.
- 5:00 Conclude

Please read the following materials in anticipation of the on-campus sessions and please bring several questions related to the readings for discussion and clarification:

U.S. COPYRIGHT OFFICE, *REPORT ON ORPHAN WORKS: A REPORT OF THE REGISTER OF COPYRIGHTS* (2006), available at <http://www.copyright.gov/orphan/orphan-report.pdf>.

H.R. 5439, 109th Congress, 2d Session (2006) (The Orphan Works Act of 2006).

S 2913, 110th Congress, 2d Session (April 24, 2008) (Shawn Bentley Orphan Works Act of 2008).

H.R. 5889, 110th Congress, 2d Session, (April 24, 2008) (The Orphan Works Act of 2008).

Section 108 Study Group Report March, 2007 (read at least the executive summary), full report and summary available at <http://www.section108.gov/>.

PETER DRAHOS, *A PHILOSOPHY OF INTELLECTUAL PROPERTY* (1996), Chapters 8 (The Justice of Information, 171-197) and 9 (Intellectual Property: For Instrumentalism, Against Proprietarianism, 199-228). Read also, Chapters 3 (Locke Labour and the Intellectual Commons, 41-72) and 4 (Hegel: The Spirit of Intellectual Property, 73-94) if you are unfamiliar with the “philosophical” arguments justifying intellectual property, or skim if you have read Locke and Hegel, but not as applied to property and intellectual property.

**June 16      Policy analysis of specific issues: Section 1201 and Licensing Issues  
LEEP**

Readings:

Review, ELECTRONIC FRONTIER FOUNDATION, UNINTENDED CONSEQUENCES: SEVEN YEARS UNDER THE DMCA (2006) (available at [www.eff.org](http://www.eff.org)).

Review, Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies.71 FEDERAL REGISTER 68472 (November 27, 2006).

Review: H.R. 1201, the Freedom and Innovation Revitalizing U.S. Entrepreneurship Act of 2007 (FAIR USE Act of 2007), 110th CONGRESS, 1st Session (February 27, 2007).

Genelle I. Belmas and Brian N. Larson Clicking Away Your Speech Rights: The Enforceability of Gagwrap Licenses, 12 COMMUNICATIONS LAW AND POLICY 37 (2007).

Andrew Jankowich, EULAW: The Complex Web of Corporate Rule-Making in Virtual Worlds, 8 TULANE JOURNAL OF TECHNOLOGY AND INTELLECTUAL PROPERTY 1 (2006).

Zachary Kats, *Pitfalls of Open Licensing: An Analysis of Creative Commons Licensing*, 46 IDEA: THE INTELLECTUAL PROPERTY LAW REVIEW 391, 391 (2006).

Midge M. Hyman, The Socialization of Copyright: The Increase Use of Compulsory Licenses, 4 CARDOZO ARTS & ENTERTAINMENT LAW JOURNAL 105 (1985).

Background (optional): U.S. CONGRESS, COPYRIGHT ISSUES IN DIGITAL MEDIA (A Congressional Budget Office Paper) (2004). This is actually a great case study of a policy analysis, though I don't necessarily recommend the results! Which course of action do you agree most with: do nothing, increase owner's rights, increase users rights, move to increase the use of compulsory licensing, increase the use of perfect pricing, increase the use of differential pricing? Why? How would you accomplish such goal, i.e., what provision of the law would you target for change first (little steps!)?

**June 23            Policy analysis of Intellectual Property Issues in a Global Context.  
LEEP**

Readings:

M.J. van den Hoven, Distributive Justice and Access to Information: Simple vs. Complex Equity (1998). (Paper presented at Computer Ethics: Philosophical Enquiry (CEPE'98), London School of Economics and Political Science, London, United Kingdom, December 14-15, 1998.)

Cecilia Albin, Getting to Fairness: Negotiations over Global Public Goods, in PROVIDING GLOBAL PUBLIC GOODS: MANAGING GLOBALIZATION 263 (Inge Kaul, et al. eds. 2003). Consider the template provided by the author (Box 1, Figure 1, and in discussion) for the application of “justice” to various negotiations of competing interests.

PETER DRAHOS WITH JOHN BRAITHWAITE, INFORMATION FEUDALISM: WHO OWNS THE KNOWLEDGE ECONOMY? (2002) (Chapters 1, 2, 13, and 14).

Rochelle Cooper Dreyfuss, We Are Symbols and Inhabit Symbols, So Should We Be Paying Rent? Deconstructing the Lanham Act and Rights of Publicity, 20 COLUMBIA VLA JOURNAL OF LAW & ARTS 123 (1996).

Rosemary J. Coombe, The Properties of Culture and the Possession of Identity: Postcolonial Struggle and the Legal Imagination, in BORROWED POWER: ESSAYS ON CULTURAL APPROPRIATION 74 (Bruce Ziff and Pratima V. Rao, eds. 1997).

Expanding on trademark and as a segue to the next session:

Regan Smith, Note, Trademark Law and Free Speech: Protection for Scandalous and Disparaging Marks, 42 HARVARD CIVIL RIGHTS-CIVIL LIBERTIES LAW REVIEW 451 (2007).

Jacqueline D. Lipton, Commerce versus Commentary: Gripe Sites, Parody, and the First Amendment in Cyberspace, 84 WASHINGTON UNIVERSITY LAW REVIEW 1327 (2006).

**June 30            No Class! Assignment: Please exercise several of your constitutional  
rights as appropriate during days leading to and on the Fourth of  
July.**

**July 7**            **Policy analysis of specific issues: Regulating “naughty” content.**  
**LEEP**

**Essay assignment I is due!**

Quote: “The priceless heritage of our society is the unrestricted constitutional right of each member to think as he will. Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error.” *American Communication Association v. Douds*, 339 U.S. 382 (1950) (Jackson, J. concurring in part and dissenting in part).

To familiarize yourself with some of the legal concepts underlying a series of lectures on free speech are provided for your review.

Readings:

Tony Doyle, A Utilitarian Case for Intellectual Freedom in Libraries, 71 LIBRARY QUARTERLY 44 (2001).

Todd Anten, “Please Disable The Entire Filter”: Why Non-Removable Filters on Public Library Computers Violate the First Amendment, 11 TEXAS JOURNAL ON CIVIL LIBERTIES & CIVIL RIGHTS 65 (2005).

Cara L. Newman, Notes and Comments, Eyes Wide Open, Minds Wide Shut: Art, Obscenity, and the First Amendment in Contemporary America, 53 DEPAUL LAW REVIEW 121 (2003).

Review: *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002); and *United States v. Williams*, 444 F.3d 1286 (11th Cir. 2006), cert granted 127 S. Ct. 1874 (2007).

Michael O. Finnigan, Jr., Comments and Casenotes, Extra! Extra! Read All About It! Censorship at State Universities: *Hosty v. Carter*, 74 UNIVERSITY OF CINCINNATI LAW REVIEW 1477 (2006).

*Christian Legal Society v. Walker*, 453 F.3d 853 (7th Cir. 2006).

Optional reading, but a good segue to next week, when the social science and psychological literature claiming a causal connection between the “speech” and a “harm” is again questioned: AVEDON CAROL, NUDES, PRUDES AND ATTITUDES: PORNOGRAPHY AND CENSORSHIP (1994), Chapters 3 and 5. MARCIA PALLY, SEX & SENSIBILITY: REFLECTIONS ON FORBIDDEN MIRRORS AND THE WILL TO CENSOR (1994), Chapters 3 and 5. [Both authors offer a critique (and criticism) of the “literature” forwarding the harm associated with pornographic material.]

**July 14            Policy analysis of specific issues: Regulating “dangerous” content.  
LEEP**

To familiarize yourself with some of the legal concepts underlying a series of lectures on tort speech are provided for your review.

Readings:

*Entertainment Software Association v. Blagojevich*, 404 F. Supp. 2d 1051 (N.D. Ill., 2005).

*Entertainment Software Association v. Granholm*, 426 F. Supp. 2d 646 (E.D. Mich. 2006).

Compare: S. 2126 (Family Entertainment Protection Act), 109th Congress, 1st Session (December 16, 2005); and S. 948 (Children and Media Research Advancement (CAMRA) Act), 110th Congress, 1st Session (March 21, 2007).

Review: What’s in a Game? State Regulation of Violent Video Games and the First Amendment, Hearing before the Senate Judiciary Committee, Subcommittee on Civil Rights and Property Rights (March 29, 2006) (especially Prof. Williams from UIUC who is critical of the some of the research claiming a causal connection).

Annika K Martin, “Stick A Toothbrush Down Your Throat:” An Analysis of the Potential Liability of Pro-Eating Disorder Websites, 14 TEXAS JOURNAL OF WOMEN AND THE LAW 151 (2005).

Cara J. Ottenweller, Note, Cyberbullying: The Interactive Playground Cries for a Clarification of the Communications Decency Act, 41 VALPARAISO UNIVERSITY LAW REVIEW 1285 (2007).

Review: 47 U.S.C. § 230.

*Prickett v. infoUSA, Inc.*, 2006 WL 887431 (E.D. Tex. 2006)

*Donato v. Moldow*, 865 A.2d 711 (N.J. Super. 2005).

ROBERT COOTER AND THOMAS ULEN, LAW AND ECONOMICS (2 ed. 1997), Chapter 8 (An Economic Theory of Tort Law, pp. 258-294). [There is a newer edition: 4th in 2003, but this is the newest version to which I have access.]

**July 21      Policy analysis of specific issues: Privacy and technology.**  
**LEEP**

To familiarize yourself with some of the legal concepts underlying a series of lectures on privacy speech are provided for your review.

Readings:

April A. Otterberg, Note, GPS Tracking Technology: The Case for Revisiting *Knotts* and Shifting the Supreme Court's Theory of the Public Space under the Fourth Amendment, 46 BOSTON COLLEGE LAW REVIEW 661 (2005).

Lynn M. LoPucki, Did Privacy Cause Identity Theft? 54 HASTINGS LAW JOURNAL 1277 (2003) (Enforcing Privacy Rights Symposium).

DANIEL J. SOLOVE, THE DIGITAL PERSON: TECHNOLOGY AND PRIVACY IN THE INFORMATION AGE, Chapter 6, Architecture and the Protection of Privacy (pp. 93-123) (2004).

COLIN J. BENNETT AND CHARLES D. RAAB, THE GOVERNANCE OF PRIVACY: POLICY INSTRUMENTS IN GLOBAL PERSPECTIVE (2003) (Chapter 2, Privacy Protection as Social Policy, pages 33-46, Chapter 8, Privacy Regimes, pages 163-185 and Chapter 9, The Evaluation of Impact, pp. 187-210).

BEATE ROSSLER, THE VALUE OF PRIVACY (2004), Chapters 1 (Introduction, pp. 1-18), 2 (Equal Freedom, Equal Privacy: On the Critique of the Liberal Tradition, pp. 19-42), and 3 (Freedom, Privacy and Autonomy, pp. 43-76).

**July 21**      **Policy analysis of specific issues: Privacy and technology.**  
**LEEP**        **USA PATRIOT Act and related issues.**

**Essay assignment II is due!**

To familiarize yourself with some of the legal concepts underlying a series of lectures on privacy are provided for your review.

Readings:

Review 50 U.S.C. § 1861; and 18 U.S.C. § 2709.

*Doe v. Ashcroft*, 334 F. Supp. 2d 471, 475 (S.D.N.Y. 2004).

*Doe v. Gonzales*, 386 F.Supp.2d 66 (D. Conn., 2005).

*Doe v. Gonzales*, 127 S.Ct. 1 (2205) (consolidated appeal of the Connecticut and Southern District cases).

*Doe v. Gonzales*, 449 F.3d 415 (2d Cir. 2007) (consolidated appeal of the Connecticut and Southern District cases).

*Doe v. Gonzales*, 500 F.Supp.2d 379 (S.D.N.Y. 2007).

A Review of the FBI's Use of National Security Letters: Assessment of Corrective Actions and Examination of NSL Usage in 2006 (March 2008) (read Introduction chapter, skim remainder time permitting), available at <http://www.usdoj.gov/oig/special/s0803b/final.pdf>.

A Review of the FBI's Use of Section 215 Orders for Business Records in 2006 (March 2008) (read Introduction chapter, skim remainder time permitting), available at <http://www.usdoj.gov/oig/special/s0803a/final.pdf>.

A Review of the Federal Bureau of Investigation's Use of National Security Letters, A Special Report (2007) (read Executive Summary and I Introduction chapter, skim remainder time permitting and discussion relating to use at North Carolina State University pp. 82-82), available at <http://www.usdoj.gov/oig/special/s0703b/final.pdf>.