

*Legal Training requirements for
archivists, librarians, and
documentalists*

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Why law?

- Law should be a course in many Schools-not only
Archive and Library Science Schools

Example: law is taught today in:

- Schools of Engineering
- Medical Schools
- Schools of Mass Media and Communication
- Information Science Schools
- Business Schools

Similar to ethics courses

- Which have reached many schools as well:
 - Arts and Sciences Schools
 - Business Schools
 - Design Schools
 - Divinity Schools
 - Education Schools
 - Government Schools
 - Law Schools
 - Medicine Schools
 - Public Health Schools

What is it that makes law so important?

- Law gives us the norms with which we have to live
- Law enables the function of the market
- Law enables the function of the system
- Law enables – in general

Do we see people upkeeping the law?

- Yes: profoundly
- Professionals in particular work with the rules
- And beyond law-we see people upkeeping norms in general-this is how human behavior is controlled
- Except (also): laws of nature and market rules
- (example: if there is no road, you cannot go at a place/ if something is very expensive, one cannot have it)

What law is important to our School?

- In the past:
 - Copyright Law
 - Data Protection Law
 - Civil Law/contracts and commercial agreements-consumer protection law
 - Communications Law
 - and other parts of law

Today: Information Law

- A ‘new’ branch of law---old questions....
- Comprising all of the above-or parts of them
- The main question is REFRAMED:
 - How, when and under what terms has one ACCESS to INFORMATION?
 - What are the rules of the TRANSFER of information?
 - Who OWNS information and under what terms?
 - What are the main CONFLICTS between agents who ask for access and agents who deny access to information?
 - HOW MUCH should INFORMATION COST? (the law an important factor regarding COSTS of access etc)

See the old branches again:

- COPYRIGHT: deals with who has property to information and when the PUBLIC takes this property (public domain)
- DATA PROTECTION: deals with WHO has access to information and under what terms
- CONTRACTS: licenses to use material is licenses to use information
- COMMUNICATIONS LAW: Internet law deals with who, when, under what terms is free to use information digitally available
- PATENTS: who 'owns' the information giving rise to an invention?

So the main theme is:

- INFORMATION
- As an abstract idea tying all the legal questions together
- As an idea where the FORM of information (digital or not-this is NOT important)
- And the nature of the AGENT seeking access etc to information is also, not so relevant any more
- public or private actor-----a distinction not so important any more/as the private/public law is also, not so important today...

Excellent, so:

- Can we teach all these kinds of law to our students?

NO!!

BUT: I try to point that:

‘it’s all information’-the aim of legal theory is to carve fair and general principles of how to deal with information (uniformity)

Our Law Courses:

1. GENERAL PRINCIPLES OF LAW

= an introduction of what law is and how it works/main distinctions

2. INFORMATION LAW I

Copyrights---data protection law---archivists and librarian ethics (codes etc)

3. INFORMATION LAW II

Internet law---censorship, freedom of information, freedom of speech, mostly public information law

Another classification:

- Copyright -----scenarios and key issues in copyright in an electronic context
- Data protection: overview of the data protection regime for information professionals -----specific issues in information, publishing and library contexts
- Freedom of information: outline of freedom of information laws-----compliance and making it work for information professionals
- Accessibility and disability discrimination law: overview of the legal regime ----- key issues in provision of digital information and services to users

What are the main legal issues for librarians-archivists today?

1. COPYRIGHT: instead of ENABLING, copyright law is RESTRICTING ACCESS TO INFORMATION

examples of very bad legislation:

1. DIGITAL MILLENIUM COPYRIGHT ACT 1998, US and
2. The Copyright Directive (Europe)

Copyright again:

- The market is very concentrated
- The terms of protection are very long: after *Eldred v. Ashcroft*, works protected for life plus 90 years/some also plus 120 years
- Threats to free culture/permission for everything/ Pay-per-use mentality
- Costs: TERRIBLE!
- Libraries: CANNOT PAY.

OTHER problems

- Exceptions for libraries? Europe: some, mostly not mandatory
- Example: public lending? An illegal act??

----exceptions for DIGITIZATION?

Which falls within the power of the copyright holder??

Forces towards PRESERVATION of materials CONFLICT with the LAW

So in these cases:

- The Law DOES NOT enable:
- The LAW is a PROHIBITION.
- STOPS legal access.

Libraries are also concerned with:

- CENSORSHIP issues, such as:
- Filtering the internet in the library
- Laws opposing the financing of libraries without the filters
- What is a filter to a librarian –what are the obligations of the librarian towards kids?

Archives?

- Knowing who and when is entitled to access-
- Matters of liability for allowing or denying access to an archive?
- In general: is there liability for information?
- Should your information be accurate, updated OR ELSE you are liable for any resulting damages?
- This is again, one of the major issues.

It follows that:

- Legal issues are not a matter of learning something to ENABLE the working of the system
 - Legal issues are a matter of learning WHAT THREATENS your existence, as a profession but also, as a CITIZEN WORRYING ABOUT PROGRESS AND LIBERTY
- WHAT IF LIBRARIES CLOSE?
- WHAT IF NO DIGITAL LIBRARIES CAN BE BORN DUE TO COPYRIGHTS' RULES?

AND MORE QUESTIONS:

WHAT IF PEOPLE CANNOT USE ALL THE
INTERNET PAGES DUE TO CENSORSHIP?

WHAT ABOUT THE DIGITAL DIVIDE?

WHAT LED TO THE MOVEMENT OF
PROGRESSIVE LIBRARINSHIP IN THE
STATES?

IS FREE CULTURE REALLY THREATENED BY
LAW?

SHOULD LIBRARIANS ACT? HAVE THEY?

SURE THEY HAVE:

- FILING *AMICUS CURIAE* BRIEFS IN EVERY INFORMATION LAW HEARD BY THE US SUPREME COURT
- INTERVENING IN THE EUROPEAN DISCUSSIONS ABOUT THE ISSUE OF DIRECTIVES (EBLIDA and others)
- BEING PRESENT AND ACTIVE!

In this sense:

The meaning of teaching information law to archivists, librarians and documentalists is to enable them

- not only to understand the system they will be working with **BUT ALSO**
- to help them think whether they should **CHANGE** this system-become activists

And in fact:

- We count upon organizations such as
 - EBLIDA—
 - American Library Association
 - IFLA
 - And of course: upon the
INTERNATIONAL COUNCIL OF ARCHIVES for any
initiative they may be willing to undertake towards the
necessary changes to information law
- And: if you want: please collaborate with us towards these
ends

Thank you!