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The Law of Libraries and Archives: Chapter 1: Libraries and the U.S. Legal System

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The Law of Libraries and Archives

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To my parents,
Ada Lou Carson and Herbert L. Carson,
who taught me how to write

and

to my wife, Gayle Novick,
who has provided my inspiration for the past 6 years.

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1

Libraries and the U.S. Legal System

Law is often considered to be a specialized area, inaccessible to the ordinary person, a subject you have to go to law school to understand. Yet at the same time, laws impact us on a daily basis. The law binds everyone; after all, society lives by the old maxim that "ignorance of the law is no excuse."

The philosophy behind this book is that the law should be accessible to everyone. My goal is to explain legal concepts in plain English so that librarians and archivists will be able to understand the principles that affect them on a daily basis. This book will provide its readers with answers, or at least it will raise issues for the readers to think about. Although this work is a basic overview, it contains enough details to allow readers to make informed choices and to talk intelligently with legal counsel.

I believe that librarians and archivists should learn the basic legal principles that apply to our daily lives. Librarians and archivists who know the law are not just operating in the dark; they have an understanding of the legal forces that impact their profession. It is my belief that, as professionals, librarians and archivists need to have a much deeper understanding of the principles of library law than most of us currently have.

Many people know a few rules that seem to provide quick answers. However, most people don't understand why the law is the way it is. There is a large amount of legal information in this book. My goal is not to make you into a lawyer, but to help you understand the law so that you can stay within the law.

Alexander Pope once said, "A little learning is a dangerous thing."[1] Just knowing a few rules can be dangerous; understanding the law is not like applying a cataloging rule. When you apply a cataloging rule, "The rule is the rule is the rule." There are no exceptions, no "applications" to the situation. In the law, on the other hand, it is the policy and the history behind the rule that is more important than the rule itself. In

the law, rules are flexible enough to apply to each particular set of facts. For that reason, librarians need to know the policy and history behind the rules in order to stay within the law.

Sometimes this book may read more like a law book than a library science book; however, that is deliberate. The idea is that, after you have read this book, you will not only understand the rules, but you will also understand why the law is fashioned the way it is. Being able to understand the reasons for the law will help libraries and archives to run in a more efficient way, and will also allow information professionals to work with attorneys at a much higher level. This will, in turn, allow legal counsel to do a better job of representing libraries and archives. Of course, the main goal of understanding the law is to enable us to better assist our patrons.

In this book, I will occasionally offer advice based upon my education and experience in law and librarianship. In some cases, I will advocate principles not specifically relating to librarians or archivists, nor specifically addressed by professional ethical codes. The advice I offer represents only my views and does not represent the view of my employer, my publisher, or my editors.

The medieval philosopher Maimonides once said that the highest form of charity is to teach a person to help himself. My goal is to educate readers so that they understand the fundamental concepts, keeping themselves within the law and avoiding problems.

The following pages contain brief summaries of the book's remaining chapters.

Chapter 2. Contracts: A Meeting of the Minds

The basic glue of our lives is the contract, which will be discussed in Chapter 2. *Contract law* is the underpinning for everything else we do. We sign contracts on a daily basis, for everything from buying books to licensing databases, and from hiring new employees to ordering new computers. Chapter 2 will tell you how contracts are formed, and will explain the law behind contract formation—including offers, acceptance, rejection, and counteroffers. This chapter will also discuss which contracts need to be put into writing so as to be enforceable.

Since many libraries are governmental entities, Chapter 2 will also discuss the process for forming governmental contracts, including an overview of the Request for Proposal (RFP) process and the Federal

Acquisition Regulation System.[2] This chapter will also discuss legal and equitable remedies for breach of contract. Chapter 2 will conclude with a discussion of illegal contracts and contracts against public policy.

Chapter 3. Copyright and Patent Law

Chapter 3 will discuss *copyright law* and *patent law*. Copyrights and patents are basic forms of intellectual property guaranteed by the U.S. Constitution. Intellectual property protects the creations of the mind, such as the work of authors, artists, and inventors. The reason we have copyright law and patent law is to encourage authors, artists, inventors, and other creative individuals, while also allowing the public to have access to written materials and to new inventions.

Chapter 3 will begin with the basics of *copyright law*, a discussion of what types of materials can be copyrighted, and an indication of how international copyright protection works. Copyright infringement is an important topic in any discussion of intellectual property. This section of Chapter 3 will also discuss remedies for copyright infringement. The section will also discuss the Sony Betamax[3] case and the recent *file-sharing* cases involving Napster,[4] Grokster,[5] and StreamCast.[6] These cases have great significance for the free exchange of information and for the ability of library patrons to access copyrighted materials.

One very important concept in all areas of intellectual property is the *Work for Hire* doctrine.[7] This section of Chapter 3 will help to answer questions about what kind of employment is included in the *Work for Hire* doctrine. There will also be a discussion of *Work for Hire* on college campuses. In addition, Chapter 3 will discuss the duration of copyright, including the Sonny Bono Copyright Term Extension Act.[8]

Next, Chapter 3 will discuss *patent law*. Librarians and archivists are a very important part of the patent system because inventors, lawyers, and patent agents must search scientific and popular literature. Information professionals can assist in determining whether the invention was the result of "prior art" (published materials and widely circulated unpublished materials). Finally, this section gives details on the U.S. patent requirement of "First to Invent," and discusses current proposals to change this patent requirement to "First to File."

Chapter 4. Fair Use and Intellectual Property Rights: The Basics of Using Information Legally

The *fair use doctrine*[9] is the basic principle that keeps copyright law from creating an absolute monopoly. Because of fair use, we are free to quote and comment on published and unpublished materials. Fair use is the principle that helps to reconcile the Freedom of Speech guarantees of the First Amendment with the intellectual property restrictions of copyright. The fair use doctrine is the subject of Chapter 4, which discusses how much of a writer's product can be borrowed, copied, or quoted by another writer.

In order to determine whether a specific situation constitutes fair use, researchers need to ask basic questions about the nature of the utilization, the nature of the copyrighted material, the amount of the material that is used, and the effect of that use on the potential market for the copyrighted item. Another question involves the difference between the style of an artist versus plagiarism of that artist's materials. This issue is illustrated by the case of singer/songwriter John Fogerty.

Fair use may also apply to common law copyright, although there is some controversy about this issue. Common law copyright applies to materials that don't qualify for Federal copyright protection. Unfixed works such as lectures are covered by state common law. Chapter 4 will discuss the question of fair use in common law copyright.

Chapter 5. Copyright and Education

How does copyright law affect the library and classroom? How does copyright law affect library e-reserves? What kinds of uses are legal for distance education? These questions about *copyright and education* will be discussed in Chapter 5.

This chapter will discuss issues relating to copyright law both on campus and in distance education. Chapter 5 will include the basic rules for classroom use. There will also be an extensive discussion of the TEACH Act,[10] which allows for transmission of some performances in a distance education class.

Chapter 6. Trademark and Trade Secret Law

Trademark law and *trade secret law* are often thought of as only pertaining to large companies. Nothing could be further from the truth, as you will see in Chapter 6.

Trademarks consist of "[w]ords, names, symbols, or devices used by manufacturers of goods and providers of services to identify their goods and services, and to distinguish their goods and services from goods manufactured and sold by others."[11] The trademark must be "famous" and "distinctive."[12] Libraries and archives not only use trademarked material on a daily basis, but they also create material that could be trademarked. There are also issues that involve libraries and concern the relationship between copyright law and trademark law.

One issue of great importance to the library and archival world involves the use of trademarks on the World Wide Web. This topic begins with domain names and cybersquatting, but also involves the legality of linking and framing. Library and archival workers need to be especially aware of these legal concerns when creating web pages.

Trade secret law involves, among other matters, efforts to maintain secrecy about business materials, secret formulas, and inventions that have not yet been patented. In these cases, the information has independent economic value, and a competitor who learns a trade secret could bring economic ruin for the person or organization that is trying to maintain the trade secret. Trade secret law has important implications for librarians and archivists, particularly in terms of patron confidentiality.

Chapter 7. Licensing of Intellectual Property

Most intellectual property is licensed rather than sold. This statement is particularly true in the library world for online databases and e-journals. Chapter 7 discusses the laws pertaining to *licensing of intellectual property*.

The rules pertaining to licensing of intellectual property are created by state law, which varies from one state to the next. The Uniform Computer Information Transactions Act (UCITA) is an attempt to standardize these laws. Unfortunately, UCITA is very controversial, and many people (and professional associations) disagree with some of the provisions of this proposed law. Chapter 7 will discuss UCITA and will explain the controversial provisions.

Another issue relating to licensing involves the inclusion in databases of articles written by freelance writers. This topic was the basis of the case of *Tasini v. New York Times*.[13] Chapter 7 will discuss the *Tasini* case in detail.

In order to stay within the law, you need to get permission to use intellectual property. Luckily this doesn't mean that you have to write to each property holder individually. There are a number of agencies that exist solely to assist users in getting the necessary permissions.

Chapter 7 contains a list of these agencies, along with their contact information. By using these agencies, permissions and licensing issues can be handled in an effective way, so that intellectual property can be used legally.

Chapter 8. Information Malpractice, Professionalism, and the Unauthorized Practice of Law and Medicine

What happens if librarians or archivists provide incorrect information? Are we then subject to lawsuits for malpractice? This issue provides the framework for Chapter 8.

Nowhere are librarians and archivists more vulnerable than when answering questions that involve law or medicine. Nowhere is there more potential for damage from incorrect information. As a result, it is vital for information professionals to avoid *the unauthorized practice of law and medicine*.

When serving patrons with legal or medical questions, the amount of help that can legally be provided depends on who the patron is and what kind of question he or she is asking. Since the unauthorized practice of law or medicine is a crime, it is vital that information professionals handle these questions appropriately.

The Virginia Bar Association has written several opinions on how libraries should deal with patrons who have legal questions. These principles can be applied by analogy to patrons with health-related questions. Library associations have also created guidelines for answering legal and medical questions without straying across the line.

In addition to the potential of legal liability for giving incorrect information in law and medicine, there are also problems relating to *information malpractice* in other areas. Malpractice occurs when a professional has breached his or her duty of care towards a client or patron. A professional is not liable for ordinary negligence as long as the pro-

fessional's standard of care has been met. This is why it is important for librarians and archivists to be considered professionals.

This issue raises the question: What is a professional? Does the law define librarians and archivists as being professionals? This issue will be discussed in Chapter 8. The chapter will also define the duty of care that information professionals owe to our patrons. I will also discuss some of the cases in which incorrect information has led to lawsuits.

Chapter 9. Search Warrants, Investigations, Library Records, and Privacy

Search warrants are an important part of any investigation. Library and archival patron records have always been subject to requests by law enforcement officials *if they have a search warrant*. However, libraries do not have to turn over records without a search warrant. Chapter 9 discusses the basics of *search warrants*, *investigations*, and *state library privacy laws*.

In order to balance the individual's rights of privacy with law enforcement's need to keep us secure, information professionals should learn the basics of search warrants. Librarians and archivists also need to understand how search warrants relate to investigations of library crime. Chapter 9 discusses the Fourth Amendment requirement for search warrants and explains the concepts of *probable cause* and *particularity*. This chapter also discusses how the Due Process clauses of the Fifth and Fourteenth Amendments relate to the library or archival setting, and how Due Process applies to investigations, including stopping a patron who is suspected of stealing materials.

The laws relating to library privacy vary from state to state. Chapter 9 will explain the similarities and differences among these laws. Some of the issues that will be discussed in this chapter include (A) what type of library is covered, (B) what type of information is private, and (C) what type of information can or can't be disclosed. The statutes from each jurisdiction are available at the Scarecrow Press support Website for this book.

Two states—Kentucky and Hawaii—do not have library privacy statutes. Instead, these states protect library patrons with opinions from the state Attorney General's office. (The Kentucky and Hawaii opinions are also available at the Scarecrow Press support Website for

this book.) Chapter 9 will discuss these opinions on library privacy. The chapter will also discuss the controversial USA PATRIOT Act, and will explain how this statute affects the library world.

Sometimes patron confidentiality is not entirely supreme. Under certain circumstances, librarians and archivists may have an ethical duty to society *not* to keep patron information confidential. The most common scenarios involve a suicidal patron or a patron who poses an immediate threat of physical violence to an identifiable target.

Chapter 9 will discuss this ethical quandary, and will use analogies with other professions in order to help librarians and archivists determine what to do when faced with a suicidal or homicidal patron. Although this book can't tell you what to do in such a situation, reading Chapter 9 will help you work through the ethical questions and potential responses in order to come to your own conclusion.

Chapter 10. Internet Use Policies and the Filtering Debate

The debate over *filtering of Websites* in libraries and archives has been raging almost since the beginning of the World Wide Web. The Children's Internet Protection Act (CIPA)[14] mandates that schools and libraries that receive Federal funding must use filtering software for juveniles. This issue is the basis for Chapter 10.

The chapter will discuss the CIPA District Court decision,[15] which was eventually overturned by the U.S. Supreme Court.[16] Unfortunately, the Supreme Court decision was one of the most complicated opinions in recent history. This opinion was a plurality decision. While five Justices were able to agree that filtering was legal in some circumstances, they were not able to agree on the legal reasons for this ruling. There are, however, several principles that can be ascertained from this decision. As a result, the Supreme Court opinion requires close reading in order to determine just what the rules are for libraries and archives.

The decision in the CIPA case requires a number of changes in library policies. Chapter 10 will interpret this opinion, and will also provide some guidance for the creation of Internet use policies in libraries and archives. The chapter will also include some articles and Websites with information to help write policies and procedures for Internet use, both among adults and by minors.

Chapter 11. Employment and Workplace Law

Libraries and archives are employers, and in order to avoid problems these organizations must know what is legal and what is not legal. Chapter 11 will discuss *employment and workplace law*. Library and archival workers need to know the basics of workplace law in order to remain legal.

Employment law is based on the law of agency. Agency law is also important for determining when an individual is acting on his or her own behalf or on behalf of an organization. It is also important to determine whether the individual is an employee or an independent contractor.

Many workers don't have employment contracts. These people are subject to the *employment-at-will* doctrine. However, some organizations do have personnel policies or employment handbooks that operate as an employment contract. It is very important for both organizations and employees to understand how these policies work and what they mean for the employment relationship. Labor unions and collective bargaining add another layer to this relationship.

All employees and organizations should understand some of the legal provisions relating to the Fair Labor Standards Act[17] and to child labor laws. Chapter 11 also discusses drug testing, discrimination and harassment, the Americans with Disabilities Act,[18] and the Family and Medical Leave Act.[19] The chapter will also explain how to hire and fire employees without being sued.

Chapter 12. Forming a Nonprofit Organization

Because many libraries and archives are nonprofit organizations, it is imperative for information professionals to understand the basics of *forming a nonprofit organization*. This is the topic of Chapter 12. Knowledge about nonprofits will also be valuable for creating Friends of the Library groups and for forming private foundations to handle donations.

Some of the issues that will be discussed in Chapter 12 include creating a mission statement and selecting a board, writing the organizational articles of incorporation and the bylaws, and creating ethical policies for board members. The chapter will also discuss the Sarbanes-Oxley Act[20] and its relevance to the nonprofit world. Last but not least, Chapter 12 will provide information on obtaining and maintaining a tax-exempt status.

Supplemental Materials on Website

Scarecrow Press provides a supplemental Website for this book. The Website includes the text of library privacy laws from every state, along with the Attorney General opinions on library privacy from Kentucky and Hawaii. The site also includes opinions and guidelines on the unauthorized practice of law in the library context. There are also valuable sources that discuss serving library patrons with disabilities. In addition, the Website lists articles about Website accessibility under Section 508, as well as articles about the ADA and employees with disabilities. To access this Website, go to the bibliographic record for this book at http://www.scarecrowpress.com/ISBN/081085189X.

The remainder of Chapter 1 will cover the very important topic of how to read legal citations.

How to Read a Legal Citation

Like any other subject area, the ability to conduct legal research is dependent upon good references and good citations. The basic building block of legal citation is *A Uniform System of Citation*, also known as the *Harvard Bluebook*.[21] The *Bluebook*—compiled by the editors of the *Columbia Law Review*, *Harvard Law Review*, *University of Pennsylvania Law Review*, and *Yale Law Review*—has been published since 1926.

Many of the main style formats, such as the *American Psychological Association* (APA) and *Modern Language Association* (MLA) handbooks, refer users to the *Bluebook* for legal citations. The *Chicago Manual of Style* also suggests that writers consult the *Bluebook* when citing legal materials. The *Bluebook* style, however, is vastly different from any of the other style guides.

In this book, I will be using *Bluebook* format (17th ed.) for all citations. There are several reasons for this use of the *Bluebook*. First of all, since the purpose of this book is to introduce librarians and archivists to the laws that affect their professional lives, I have included many legal citations. It makes sense to keep to a single style instead of switching styles back and forth. Secondly, using *Bluebook* style in the book will help readers to become familiar with this citation format. Finally, using legal citation formats will not only help library and archival workers to

research legal issues for their work, but will also help them in answering patron's questions, working on collection development, and cataloging legal materials.

The basic foundation of the legal citation is the abbreviation. Each of the standard legal research sets has a standardized abbreviation. For example, the *United States Reports* (the official publication which contains cases from the U.S. Supreme Court) is always designated as *U.S.*

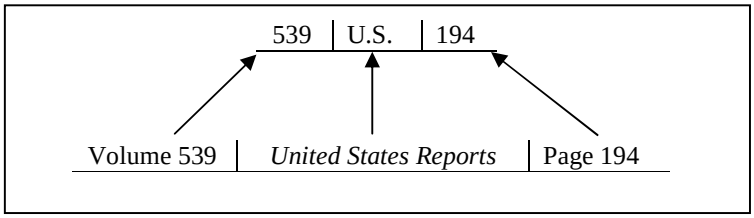
Often the same case or statute is published in more than one location. When that happens, the official publication put out by the government is always listed first. Privately published sets are then listed *after* the official publication information.

It is not considered improper to give a citation to the official set, even if you have used an unofficial version. In fact, it is recommended. Since the text of the case, statute, or regulation is always the same in each version, you should provide the citation to the official source. Citing the unofficial sources is optional.

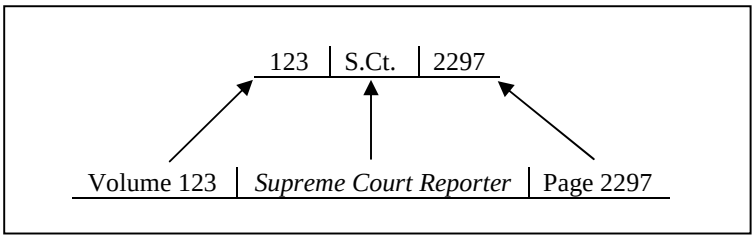
Whenever you see a legal citation, the number before the abbreviation is the volume number, and the number after the abbreviation is the page number. A legal citation may look like the following:

United States v. American Library Association, 539 U.S. 194;
123 S. Ct. 2297; 156 L. Ed. 2d 221; 2003 U.S. LEXIS 4799;
71 U.S.L.W. 4465 (2003), *available at*
http://laws.findlaw.com/us/000/02-361.html.

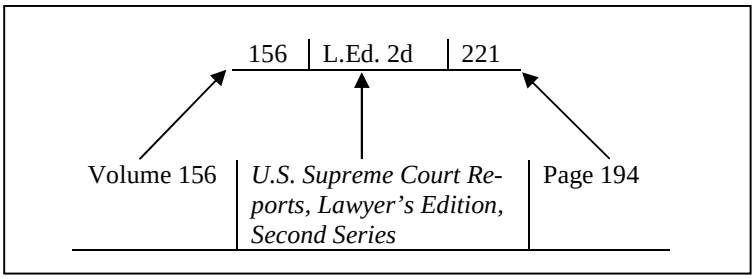
This citation breaks down as follows:



After the case name (*United States v. American Library Association*), the first citation is to the official publication. In volume 539 of the *United States Reports*, the case will begin on page 194. The official citation should always be used, even if the case has been retrieved from another source. The other citations that follow are privately published sets that also include this case:



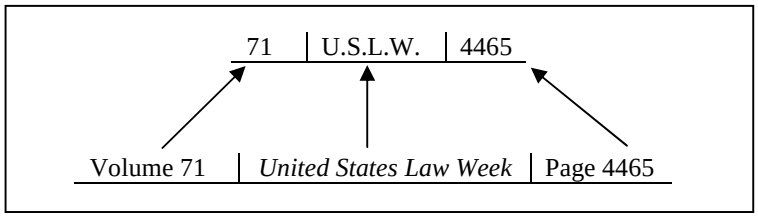
The *Supreme Court Reporter* is published by West Group and contains the full text of all Supreme Court opinions. This set also contains a number of editorial enhancements, including a classification system (similar to the Library of Congress Classification System) for legal principles found in each case. The *Supreme Court Reporter* also includes helpful summaries of the cases.



The *United States Supreme Court Reports, Lawyer's Edition* is published by LexisNexis. Like the *Supreme Court Reporter*, the *Lawyer's Edition* contains the full text of the Supreme Court opinion, along with editorial enhancements. The *Lawyer's Edition* began renumbering the volumes again in a second series, hence the 2d in the citation.

Many researchers find the *Lawyer's Edition* to be useful because it provides cross-references to other research tools—such as the American Law Reports (ALRs)—which are also published by LexisNexis. These cross-references are very helpful. In addition, the *Lawyer's Edition* and the *Supreme Court Reporter* both contain references to articles in law review journals that discuss the case. Using the annotations in the *Supreme Court Reporter* or the *Lawyer's Edition* is a helpful way to perform research.

The next citation is for the publication *United States Law Week*:



Published weekly, the *U.S. Law Week* contains the full text of cases from Federal courts, state courts, and administrative agencies. The editors publish all U.S. Supreme Court cases, as well as cases from other courts that "establish new precedents, address new statutes, contribute to emerging legal doctrines, tackle current controversies, or [cause] splits in the Circuits."[22]

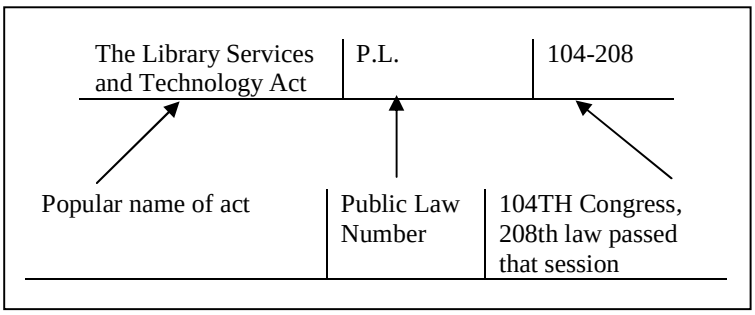
The citation example of *United States v. American Library Association* also contains some references to fee-based electronic products. The premier databases for legal research are LexisNexis and Westlaw, although other fee-based services (such as LoisLaw and VersusLaw) can be used. In the citation for *United States v. American Library Association* used earlier, *2003 U.S. LEXIS 4799* refers to the LexisNexis database. The listed Website, which is part of a comprehensive free legal research site called Findlaw, also contains the full text of this case.

Like LexisNexis, Westlaw has a unique identifier number for cases. The Westlaw citation for the *United States v. American Library Association* case is *2003 WL 21433656*. Westlaw's current policy is to remove the WL number once the official citation (to the *U.S. Reports*) is available. However, if you find an item that still has the WL number, you can enter that number into the database and retrieve the case.

Statute citations are also very important. Statute information is generally written using either a public law number, a citation from the *U.S. Statutes at Large*, or a citation from the *United States Code*. When a statute is first passed, it is officially published in the U.S. Statutes at Large. The West Group also publishes the statutes in the *United States Code Congressional and Administrative News (U.S.C.C.A.N.)*. The statutes are published in the order that they were passed. Once this has occurred, the statutes are collected by subject arrangement in the *United States Code*.

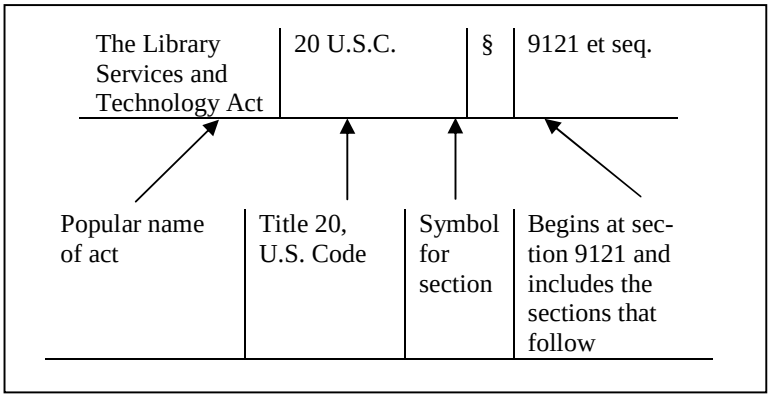
To illustrate how a statute citation is created, I will use the Library Services and Technology Act as an example. The entire statute as it was passed by Congress is cited as:

The Library Services and Technology Act, P.L. 104-208



The next example contains the same statute after it has been codified. (Codification puts the sections of the law together with other laws on the same subject.) The citation contains the symbol § (like a double letter S). In legal citations, the symbol § means "section number." When a citation contains multiple section numbers, this is often shown by using §§. In addition, if a statute includes multiple code sections in a row, legal citations often use the phrase *et seq*. after the initial section number (*et seq*. may or may not be italicized, but it is always written in lowercase letters). Finally, the volume numbers for codes are often called "Titles." For example, copyright law is contained in Title 17 of the *U.S. Code*. Here is an illustration of the proper citation for a codified statute:

The Library Services and Technology Act, 20 U.S.C. § 9121 *et seq.*



With this information, you should be able to read legal citations. The ability to interpret legal citations will help librarians and archivists find statutes and judicial rulings. Even more important, this skill will translate into better service for our patrons.

Table 1.1 shows the official citations of major reporters that contain judicial cases from each state. Table 1.2 shows the citation abbreviations for reporters which include Federal court cases. Table 1.3 gives the citations for sets that contain Federal statutes and regulations. Table 1.4 gives information on legal encyclopedias, digests, and annotations. For more information on legal citations and abbreviations, please consult *A Uniform System of Citation* (the *Bluebook*).

Table 1.1. Reporters Containing State Court Cases

Reporter Title	**Citation Abbreviation**	**Description**
Atlantic Reporter	A.	Cases from CT, DE, DC, ME, MD, NH, NJ, PA, RI, and VT.
California Reporter	Cal. Rptr.	California cases (unofficial).
Northeastern Reporter	N.E.	Cases from IL, IN, MA, NY, and OH.
Northwestern Reporter	N.W.	Cases from IA, MI, MN, NE, ND, SD, and WI.
New York Supplement	N.Y.S.	New York cases (unofficial).
Pacific Reporter	P.	AK, AZ, CA, CO, Guam, HI, ID, KS, MT, NV, Northern Marianas, NM, OK, OR, UT, WA, and WY.
Southeastern Reporter	S.E.	Cases from GA, NC, SC, VA, and WV.
Southern Reporter	So.	Cases from AL, FL, LA, and MS.
Southwestern Reporter	S.W.	Cases from AR, KY, MO, TN, and TX.

Table 1.2. Reporters Containing Federal Court Cases

Reporter Title	**Citation Abbreviation**	**Description**
United States Reports	U.S.	Cases from the United States Supreme Court (official).
Supreme Court Reporter	S.Ct.	Cases from the United States Supreme Court. Unofficial version of United States Reports. Contains headnotes and other editorial enhancements.
United States Supreme Court Reports, Lawyer's Edition	L.Ed.	Cases from the United States Supreme Court. Unofficial version of United States Reports. Contains cross-references and other editorial enhancements.
Federal Reporter	F.	Cases from the U.S. Circuit Courts of Appeal. Also contained cases from the United States District Courts before 1932.
Federal Appendix	Fed. Appx.	Unpublished cases from the U.S. Circuit Courts of Appeal. Does not include the 5th or 11th Circuits. Cases can't be cited to courts as precedent.
Federal Supplement	F. Supp.	Cases from the United States District Courts since 1932. Before 1930, use the Federal Reporter.
Federal Rules Decisions	F.R.D.	Federal cases that discuss or interpret Federal Court Rules.
United States Law Week	U.S.L.W.	Weekly summary of cases from state and Federal courts.

Table 1.3. Sets Containing Federal Statutes and Regulations

Title of Set	**Citation Abbreviation**	**Description**
United States Code	U.S.C.	Federal statutes passed by Congress, arranged by topic (official).
United States Code Annotated	U.S.C.A.	Unofficial version of the *United States Code*. Each statute contains references to cases that discuss them. Published by West Group.
United States Code Service	U.S.C.S.	Unofficial version of the *United States Code*. Each statute contains references to cases that discuss them. Published by LexisNexis.
United States Statutes at Large	Stat.	Official text of statutes passed by Congress, in the order the statutes were passed.
U.S. Code Congressional and Administrative News	U.S.C.C.A.N.	Unofficial version of *Statutes at Large*. Also contains Legislative History documents for each statute. Published by West Group.
Code of Federal Regulations	C.F.R.	Administrative regulations promulgated by Federal administrative agencies, arranged by topic. Official publication by the U.S. Government Printing Office (GPO).
Federal Register	Fed. Reg.	Official source of new and proposed Federal administrative regulations, standards, programs, etc. Published daily by GPO.

Table 1.4. Encyclopedias, Digests, and Annotations

Reporter Title	Citation Abbreviation	Description
American Jurisprudence	Am. Jur.	Legal encyclopedia.
Corpus Juris Secundum	C.J.S.	Legal encyclopedia. Often referred to as C.J.S.
American Digest (includes Century Digest, Decennial Digest, and General Digest)	Am. Dig.	References to cases from the courts of all 50 states and the Federal system. Arranged by topic, using the West Key Number system.
Federal Practice Digest	Fed. Dig.	References to Federal cases by topic, using the West Key Number system.
American Law Reports	A.L.R.	Contains extremely detailed articles (annotations) about legal topics.

Conclusion

If you work in the information profession, you need to know about the law. Laws affect our daily lives, underlying every commercial transaction and every employment relationship, every article copied and every database licensed. My purpose in this book is to explain the principles behind our laws so that librarians and archivists will understand the law rather than just blindly following a few rules.

In this book, I sometimes use the term "libraries" to mean both libraries and archives. Similarly, when I use the term "librarian," I also include archivists. As information professionals, librarians and archivists have much more in common than they have differences. Most of the laws that relate to libraries and librarians also relate to archives and archivists. Unless otherwise designated, all of the concepts covered in the book are equally applicable to both professions.

Librarians and archivists often become involved in issues relating to intellectual property, even if these issues have no immediate implications for traditional library and archival services. This happens because

copyright restrictions can be a form of censorship, and our profession has traditionally helped to guard society against limitations on expression as well as restrictions on the dissemination of information. A free and open marketplace of ideas requires that ideas may be expressed, challenged, and discussed. Information professionals work to maintain this open marketplace so that ideas are available to everyone.

By doing more than merely learning rules, information professionals will be better able to assist patrons, remain within the law, and communicate with legal counsel about matters relating to the library or archive. Reading this book won't make you a lawyer. However, reading this book will help you to think about and understand the legal foundations of your daily work and to make better decisions about legal and ethical issues.

My goal is to help information professionals deal with the issues we all encounter. Now, fasten your seat belts, and I will take you on a journey through the law of libraries and archives.

Notes

Chapter 1

1. Alexander Pope, *An Essay on Criticism* 1-15 (1711).

2. 48 C.F.R. § 1 et seq.

3. Sony Corporation of America et al. v. Universal City Studios, Inc., 464 U.S. 417 (1984).

4. A&M Records v. Napster, Inc., 239 F.3d 1004, 2001 U.S. App. LEXIS 5446, 2001 Cal. Daily Op. Service 1255, 2001 D.A.R. 1611, Copy. L. Rep. (CCH) P28200, 57 U.S.P.Q.2d (BNA) 1729 (9th Cir. Cal. 2001); *injunction granted*, A&M Records, Inc. v. Napster, Inc., 2001 U.S. Dist. LEXIS 2186, Copyright Law Reporter (CCH) P28213 (N.D. Cal. Mar. 5, 2001); *stay granted by, in part*, in re Napster, Inc. Copyright Litigation, 191 F. Supp. 2d 1087, 2002 U.S. Dist. LEXIS 2963, Copy. L. Rep. (CCH) P28386, 2002-1 Trade Cases (CCH) P73588, 61 U.S.P.Q.2d (BNA) 1877 (N.D. Cal. 2002); *affirmed by*, A&M Records, Inc. v. Napster, Inc., 284 F.3d 1091, 2002 U.S. App. LEXIS 4752, 2002 D.A.R. 3223, 52 Fed. R. Serv. 3d (Callaghan) 5, 62 U.S.P.Q.2d (BNA) 1221 (9th Cir. Cal. 2002); *Stay granted by, Motion granted by, in part, Motion denied by, in part*, in re Napster, Inc. Copyright Litigation, 2004 U.S. Dist. LEXIS 7236 (N.D. Cal. Feb. 22, 2004).

5. Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 162 L. Ed. 2d 781, 125 S. Ct. 2764, 2005 U.S. LEXIS 5212, 18 Fla. L. Weekly Fed. S 547, 33 Media L. Rep. (BNA) 1865, 75 U.S.P.Q.2d (BNA) 1001 (2005), *available at* http://laws.findlaw.com/us/000/04-480.html.

6. *id*. The Grokster and StreamCast cases were joined, and the courts considered these two cases together.

7. 17 U.S.C. § 201(b).

8. Sonny Bono Copyright Term Extension Act of 1998, S. 105-505. Signed into law on October 27, 1998.

9. 17 U.S.C. § 107.

10. 17 U.S.C. § 110(2).

11. Mark Radcliffe, *Patent, Trademark, and Trade Secret Law* § 2 Findlaw Professionals *at* http://profs.lp.findlaw.com/patents/patents_2.html, *ex-*

cerpted from Mark Radcliffe, *The Multimedia Law and Business Handbook* (Ladera Press 1999).

12. *id*.

13. Tasini v. New York Times Co., 533 U.S. 483, 150 L. Ed. 2d 500, 121 S. Ct. 2381 (2001). Previous incarnations of the case include: 972 F. Supp. 804, 1997 (this case will be referred to as "Tasini I"); *reconsideration denied*, Tasini v. New York Times Co., 981 F. Supp. 841, 1997 U.S. Dist. LEXIS 17140 (S.D.N.Y. 1997); *reversed and remanded*, 192 F.3d 356, 1999 (2d Cir. N.Y. 1999), *opinion withdrawn by Court and replaced by* 206 F.3d 161 (this case will be referred to as "Tasini II"), *writ of certiorari granted*, 148 L. Ed. 2d 434, 121 S. Ct. 425. For related proceeding, *see also*, Marx v. Globe Newspaper Co., 2001 Mass. Super. LEXIS 9 (Mass. Super. Ct. Jan. 11, 2001).

14. 114 Stat. 2763A-335, *codified at* 20 U.S.C. §§ 9134(f)(1)(A)(i) and (B)(i) and at 47 U.S.C. §§ 254(h)(6)(B)(i) and (C)(i).

15. American Library Association v. United States, 201 F. Supp. 2d 401 (E.D. Pa. 2002). [Hereinafter "District Court Opinion."]

16. United States v. American Library Association, 539 U.S. 194; 123 S. Ct. 2297; 156 L. Ed. 2d 221; 2003 U.S. LEXIS 4799; 71 U.S.L.W. 4465 (2003), *available at* http://laws.findlaw.com/us/000/02-361.html. [Hereinafter "CIPA Case."]

17. 29 U.S.C. § 201 – 29 U.S.C. § 209.

18. 42 U.S.C. § 12101 et seq.

19. 29 U.S.C. § 2611 et seq.

20. Sarbanes-Oxley Act of 2002, PL 107-204, 116 Stat 745.

21. *A Uniform System of Citation* (17th ed., Harvard Law Review Association 2000). Peter Martin has created an online citation manual based on Bluebook style; *see*, Peter W. Martin, *Introduction to Basic Legal Citation* (Cornell Legal Information Institute 2003), *available at* http://www.law.cornell.edu/citation.

22. Bureau of National Affairs, *U.S. Law Week Product Structure* (last accessed August 28, 2005), *available at* http://www.bna.com/products/lit/uslw.htm.

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