

Spring 2018 – Tuesdays – 12-1:40 p.m.

Section: 21158D

Location: ASC 328

Instructor: Jonathan Kotler

Office: ASC 202A

Office Hours: Monday: By appointment. Tuesday and
Wednesday: 9:30-11:30 a.m., afternoons by appointment.

Text: *The Law of Journalism and Mass Communication* (5th Ed.), by Robert Trager, Joseph Russomanno, Susan Dente Ross and Amy Reynolds (Sage CQ Press)

Introduction: The more things change, the more the law stays the same

A few years ago, in 2014, the United States Supreme Court ruled in two cases, which, at first blush, seemed to have nothing to do with each other. In the first, *Riley v. California*, a rarely unanimous Supreme Court held that the police need search warrants to search the mobile phones of people they arrest. In the second, *American Broadcast Companies, Inc. v. Aereo, Inc.*, the Court found that Aereo, a television streaming service, had violated copyright laws by capturing the broadcast signals on miniature antennae and delivering them to subscribers for a fee.

While there is significant legal importance to both cases, the takeaway principle represented by these two decisions is one that is oftentimes overlooked in this age of rapidly advancing new technology coupled with a societal quest for the next “big thing.” And it is this: **throughout history, technology has adapted to the law, rather than the other way around.**

If you remember nothing else from this class, remember that. Certainly, in making its rulings on the above-referenced two cases, the United States Supreme Court did.

An illegal, unconstitutional, warrantless search, remains illegal and unconstitutional, whether what is searched is the contents of one’s home or the contents of one’s mobile phone. And a violation of copyright law amounting to stealing, remains unlawful regardless of the technology used to take someone else’s property without the property owner’s permission.

Nevertheless, there remain many in society.....techies, futurists, the just plain ignorant and, sadly, even some on our own faculty.....who believe that our world of rapidly advancing technology has led to changes in the law.

They are wrong. It hasn’t. (In fact, prove this to yourselves, and if they are open-minded, to them: The next time one of these misguided souls tells you that technology has changed the law, ask them for an example. They won’t be able to give you any.)

What the new technologies have provided us is an opportunity to re-examine areas of the law we thought we knew but hadn't considered deeply in years. These include such things as the "minimum contacts" rule and jurisdiction, privacy, especially as it impacts claims of national security, contract law (strangely, as it pertains to privacy), prior restraint in a world without meaningful international borders, government regulation of the new technologies, and, of course, intellectual property, among others. To the extent that we are able to do so, we're going to be taking a look at all these things this semester, with emphasis among them based on areas not adequately covered in Journalism 208, which you have all taken previously.

And in that vein, one of the areas of law that has been most impacted by the new technologies, as well as by rapidly changing political and economic forces we have dealt with in recent years, is the concept of privacy. It is also an area of the law that, I believe, has been given rather short shrift in JOUR 208.

Accordingly, we're going to be focusing on that for the first few weeks of the semester. Then, we're going to have a go at government attempts through the years to regulate electronic communications, and the impact this has had on the First Amendment rights both of the regulated, read narrowly, and on the rest of us. (Remember that the next time President Trump threatens to revoke a television network's license, screams about "fake news," or calls the press "the enemy of the people.") What we cover during the few weeks about that more or less depends on two things: (1) what, in questioning you, seems to have been lacking in your earlier J.208 course, and (2) what you need to know about the fast-changing events outside of the campus walls as these events impact on media law and your ability to carry out your responsibilities as journalists.

The last three or four weeks of the semester are what make this class different from others you have taken at the School of Journalism, and, specially, different from other law courses. And it is different specifically because you will be teaching it to your colleagues.

How so?

Because early in the semester (see calendar below) you will be asked to choose a topic dealing with the contemporary intersection of technology and the law and then complete two tasks with respect to your chosen area: First, you will be asked to produce a research paper on your topic (to be turned in at the end of the semester), and second, you will give a short presentation (15 minutes or so) to your classmates about what you have discovered in producing your paper. (More specifics on the requirements for the successful completion of these tasks to follow.)

Course Objectives: There are three:

1. To enable each of you to understand what your rights are as journalists (and as Americans) under our system of laws, and especially, under the First Amendment to the Constitution of the United States
2. To keep you out of trouble, that is, to enable you to recognize the limits of your legal rights and to recognize, as well, the many ethical dilemmas confronting members of the media when they seek to exercise their legal rights. (As you will learn, oftentimes there is a conflict between what is legal and what is ethical.)

3. To have an understanding, devoid of mythology, of how we arrived at this place and time in what has been called, “The American Experiment.”

Class Format:

Unlike many of the other classes you will take during your studies at USC (and for some of you, beyond) this is neither a “skills” class (except to the extent that the “skill” of rational, analytical thinking must be employed) nor one that is highly theory based. What you learn here will be 100% “real world.” The law is something that cannot be ignored, regardless of the professional path you choose to undertake, or, even whether or not you work at all. For Americans especially, the law is everywhere, every day. For journalists particularly, an understanding of the law, and more narrowly, of the law that impacts their ability to do their jobs, is no longer an option. It is a requirement.

As such, and so that you understand that the law is something that touches journalism and journalists 24/7, we will begin each class session with a discussion of the week’s media law “events,” that is, those stories and those issues with a media law focus that occurred during the previous week, especially those dealing with the new technologies. This will serve not only as a “heads up” for all of you, but as a reminder, as well, that without a knowledge of what is going in the intersection between technology and the law, you’ll be missing out on some very big stories, and, depending on what your professional turf happens to be, will diminish your value as a journalist. Included in this weekly discussion, will be media law stories not just from the United States, but from around the globe. Such stories will serve not only as a contrast about what we learn during the semester about American media law, but will, as well, point out how, in so many instances, American law—and what we have come to accept as “normal”—really is an outlier and quite unique. Students are encouraged to bring in examples of technology and the law related cases and stories to discuss during this opening class period. All contributions in this regard sent via email prior to class will be, as well, gratefully accepted.

Tentative Calendar (all chapter references are to your textbook)

- January 9: **Take home essay assigned**; class discussion of course goals and objectives.
- January 16: The Communications Act of 1996: The end of the journalism as we knew it.
- January 23: **Term research projects assigned**; The evolution of privacy as a protectable right. (Chapter 6)
- January 30: **Term research topics due by start of class via email to: kotler@usc.edu**. Privacy (continued). (Chapter 6)
- February 6: **Take home essay due by start of class in hard copy only**; Privacy (continued). (Chapter 6)
- February 13: Privacy (continued). (Chapter 6)

Weeks of February 19 and the 26th: Mandatory progress conferences with course instructor
(to be scheduled)

February 20: Broadcasting and the regulation of electronic media. (Chapter 11)

February 27: A game changer: The Communications Act of 1996. (Chapter 11)

March 6: **Midterm Examination**

March 13: Spring Break; No Class!

March 20: TBD

March 27: TBD

April 3: TBD or Student oral reports

April 10 Student oral reports

April 17: Student oral reports

April 24: Student oral reports

May 9, 2-4 p.m.: **Written semester research project due via email to: kotler@usc.edu, by
2 p.m.**

Discussion

Grading/Course Requirements:

There will be four graded assignments in this class. And in recognition that students bring different personal and academic strengths and weaknesses to each course, these will be of very distinct types. These will consist of one take home essay assigned at the beginning of the semester, an in-class written examination about two-thirds of the way through the semester, and an end of the semester research paper which will include an oral, in-class presentation in the semester's final weeks. Each of these things: (1) the take home essay, (2) the in class examination, (3) the research paper, and (4) the oral presentation, will be worth 100 points. In other words, there will be a total of 400 semester points possible for this course.

Number grades on the assignments will translate to letter grades for the semester as follows: 360 points (or 90% of 400) = a semester grade of "A"; 352 points (or 88% of 400) = a semester grade of "A-"; 340 points (or 85% of 400) = a semester grade of "B+"; 300 points (or 80% of 400) = a semester grade of "B"; 312 points (or 78% of 400) = a semester grade of "B-"; 300 points (or 75% of 400) = a semester grade of "C+"; 280 points (or 70% of 400) = a semester grade of "C"; 272 points (or 68% of 400) = a semester grade of "C-"; **271 points or below = a semester grade of "F"**.

Late Papers: With respect to all assignments other than the two examinations which will be taken in class, note that late papers will be accepted, but at a price. They will be penalized at the rate of one grade for each day or part thereof that they miss their assigned deadline. This, of course, puts a premium on your ability to make good choices where there are conflicts and to plan your time both wisely and well ahead. A year ago, unfortunately, three of my best students did not receive the final course grades they had earned, because, in each case, they chose to miss class deadlines in favor of pursuing student media “obligations.” **There will be no exceptions to this rule.**

Stuff They Made Me Include:

Add/Drop Dates for Session 001 (15 weeks: 1/8/18 – 4/27/18)

Friday, January 26: Last day to register and add classes for Session 001

Friday, January 26: Last day to drop a class without a mark of “W,” except for Monday-only classes, and receive a refund for Session 001

Tuesday, January 30: last day to drop a Monday-only class without a mark of “W” and receive a refund for Session 001

Friday, February 23: Last day to drop a course without a mark of “W” on the transcript. [Please drop any course by the end of week three (or the week three equivalent for short sessions) to avoid tuition charges.]

Friday, April 6: Last day to drop a class with a mark of “W” for Session 001

Support Systems:

Equity and Diversity

Student Counseling Services (SCS) – (213) 740-7711 – 24/7 on call

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention. engemannshc.usc.edu/counseling

National Suicide Prevention Lifeline – 1 (800) 273-8255

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. www.suicidepreventionlifeline.org

Relationship and Sexual Violence Prevention Services (RSVP) – (213) 740-4900 – 24/7 on call

Free and confidential therapy services, workshops, and training for situations related to gender-based harm. engemannshc.usc.edu/rsvp

Sexual Assault Resource Center

For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: sarc.usc.edu

Office of Equity and Diversity (OED)/Title IX Compliance – (213) 740-5086

Works with faculty, staff, visitors, applicants, and students around issues of protected class. equity.usc.edu

Bias Assessment Response and Support

Incidents of bias, hate crimes and microaggressions need to be reported allowing for appropriate investigation and response. studentaffairs.usc.edu/bias-assessment-response-support

The Office of Disability Services and Programs

Provides certification for students with disabilities and helps arrange relevant accommodations. dsp.usc.edu

Student Support and Advocacy – (213) 821-4710

Assists students and families in resolving complex issues adversely affecting their success as a student
EX: personal, financial, and academic. studentaffairs.usc.edu/ssa

Diversity at USC

Information on events, programs and training, the Diversity Task Force (including representatives for each school), chronology, participation, and various resources for students. diversity.usc.edu

USC Emergency Information

Provides safety and other updates, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible. emergency.usc.edu

USC Department of Public Safety – UPC: (213) 740-4321 – HSC: (323) 442-1000 – 24-hour emergency or to report a crime. Provides overall safety to USC community. dps.usc.edu

Honesty/Plagiarism/Academic Integrity Policy

1. USC Statement on Academic Integrity

USC seeks to maintain an optimal learning environment. General principles of academic honesty include the concept of respect for the intellectual property of others, the expectation that individual work will be submitted unless otherwise allowed by an instructor, and the obligation both to protect one's own academic work from misuse by others as well as to avoid using another's work as one's own. All students are expected to understand and abide by these principles. *SCampus*, the Student Guidebook, contains the Student Conduct Code in Section 11.00, while the recommended sanctions are located at <http://scampus.usc.edu/university-governance>. Students will be referred to the Office of Student Judicial Affairs and Community Standards for further review, should there be any suspicion of academic dishonesty. The review process can be found at <http://www.usc.edu/student-affairs/SJACS>.

2. School of Journalism Plagiarism/Academic Integrity Policy

The following is the School of Journalism's (relatively) new (effective January, 2012) policy of plagiarism/academic integrity that each faculty member has been required to place in each School of Journalism course syllabus:

Plagiarism is defined as taking ideas or content from another and presenting it as one's own, either verbatim or recast in your own words. It is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Section 11, *Behavior Violating*

University Standards <https://scampus.usc.edu/b/11-00-behavior-violating-university-standards-and-appropriate-sanctions/>. Other forms of academic dishonesty are equally unacceptable. For instance, it is assumed that the work you submit for this course is work you have produced entirely by yourself, and has not been previously produced by you for submission in another course or Learning Lab, without approval of the instructor.

The following is the School of Journalism's policy on academic integrity as published in the University Catalogue:

"Since its founding, the USC School of Journalism has maintained a commitment to the highest standards of ethical conduct and academic excellence. Any student found plagiarizing, fabricating, cheating on examinations, and/or purchasing papers or other assignments faces sanctions ranging from an "F" on the assignment to dismissal from the School of Journalism." All academic integrity violations will be reported to the office of Student Judicial Affairs and Community Standards (SJACS), as per university policy, as well as journalism school administrators and the school's academic integrity committee."

(For the (historical) record, the following was how the School of Journalism defined and dealt with plagiarism prior to January, 2012, and for many decades prior thereto:

"Plagiarism is defined as taking ideas or writings from another and passing them off as 'one's own; in journalism, this includes appropriating the reporting of another without clear attribution."

And because in the journalism business plagiarism has always been viewed as among the most serious of transgressions a reporter could engage in, prior to January, 2012, a charge and subsequent finding of guilt in committing plagiarism, led, without exception, to the immediate expulsion from the School of Journalism. Said the old, pre-January 2012 policy:

"Any student found guilty of plagiarism, fabrication, cheating on examinations, or purchasing papers or other assignments will receive a failing grade in the course and will be dismissed as a major from the School of Journalism."

You will note immediately two major differences between the old policy and the current one: First, under the prior policy, "appropriating the reporting of another without clear attribution" was included within the definition of plagiarism.

While this language has been dropped from the current "definition," rest assured that in **THIS** class, failure to properly attribute the work of another and passing it off as one's own will be dealt with as plagiarism, as it is in the rest of the world outside of the current School of Journalism. Moreover, don't even try to use the defense of "innocent" aggregation of information. Doing so may get you off the hook in other classes where aggregation of information without permission or proper attribution is acceptable, but not in this one. Stealing—that is aggregating without permission or attribution—is never innocent. Nor is it ever acceptable.

The other major difference between the old policy on plagiarism/academic integrity and the current one is in the penalties that might be imposed subsequent to a finding of guilt. Under the old policy, one

strike and you were out (of the School of Journalism). That is how serious a transgression plagiarism was thought to be. Under the current policy regarding possible penalties, however, it is a crapshoot. But be assured, there WILL be a penalty of some sort for violating the current policy, even if the guilty perpetrator does not know in advance of committing the offending act what it will be. Do you feel lucky? Is it worth the risk?

3. Internships

The value of professional internships as part of the overall educational experience of our students has long been recognized by the School of Journalism. Accordingly, while internships are not required for successful completion of this course, any student enrolled in this course that undertakes and completes an approved, non-paid internship during the semester shall earn academic credit herein of an amount equal to 1 percent of the total available semester points available for this court (which is five (5) points). To receive instructor approval, a student must request an internship letter from the Annenberg Career Development Office and bring it to the instructor to sign by the end of the third week of classes. The student must submit the signed letter to the media organization, along with evaluation form provided by the Career Development Office. The form should be filled out by the intern supervisor and returned to the instructor by the last day of class. Note: The internship must be unpaid and can only be applied to one journalism class.

A few words about class attendance and cell phone and in-class computer use

It is never acceptable to miss class because you have a conflict with an assignment or obligation in another class (or with a student activity). **As soon as such a conflict becomes apparent**, it is incumbent upon the student to inform the professor, instructor or advisor in the course or activity who/that has created the conflict that you have an academic obligation elsewhere. Thereafter, it is the professional responsibility of the said professor/instructor/advisor to respect your **prior** obligation and to take whatever steps are necessary to ameliorate the conflict which his/her course or activity assignment created. These conflicts, created by others, are not your problem. Do not make it one by remaining silent, attempting to be two places at once, or worse, cutting class. These are bad, unprofessional work habits, and surely will catch up with you in the future. (If in the unlikely event that you are unable to resolve the time conflict, as aforesaid, immediately notify the professor in THIS class so that you are not caught in the middle of a situation for which you are not responsible.)

If, however, you *ARE* going to miss class (for some reason other than an academic/activity conflict, as aforesaid), prior notification (that is, prior to the start of class you intend to miss) is both the courteous thing to do, and is expected.

Please note: This class is a “phubbing” free zone. The use of cell phones during class (including consulting same to receive messages or sending text messages) **is strictly prohibited**. When class begins your cell phones should be turned off and should remain that way (except, during the official class break, if you so choose). Serial violators of this rule will be asked to leave class for the duration of the session during which they are in violation of this rule. As for computer usage, of course you may use them to take notes during class. **But using them to send or receive personal messages or to surf the Web is likewise forbidden.**

David Carr, the late *New York Times* journalist and part-time journalism instructor used to include the following in his course syllabi: "If you text or email during class, I will ignore you as you ignore me. It won't go well." Consider his words as if they were mine, as well.

About your professor:

An attorney by profession, Jonathan Kotler has been on the faculty of the USC School of Journalism (from which he graduated in 1967) since 1983, where he has taught courses on media law, media history, media ethics and international journalism, among others. For seven years, Kotler supervised graduate journalism students undertaking professional internships in London, England. A graduate of the UCLA School of Law, Kotler has represented clients at every level of the American judicial system, including at the United States Supreme Court. For a period of ten years, Kotler was at the USC Graduate School, where he served as Associate Dean, Dean, and finally, as Director of Graduate and Professional Programs in the Office of the Provost. He has lectured frequently on the law of higher education throughout the United States and Canada, both for the Council of Graduate Schools (CGS) and the Western Association of Graduate Schools (WAGS), of which organization he served as President in 2000-2001. In addition to his journalism and law degrees, Kotler also holds two other graduate degrees (in liberal arts and in history), both from USC. While pursuing the latter, he served as the teaching assistant for the late Dr. John R. Hubbard, then USC's President. He also has completed graduate course work at Cambridge University, England, and University College Galway, Ireland. Kotler has two sons, Ryan, who is a graduate of Oberlin College and the Eastman Conservatory of Music and works for Google, Inc., and Brendan, a four year member of the USC baseball team and graduate of both the Annenberg School and the UCLA School of Law. He currently works as an executive for the Westfield Corporation.