 **JOUR 408: Advanced Media Law in**

 **The Digital Age**

 **2 Units**

 **Spring 2020**

 **Tuesdays:** 12:00-1:40 p.m., Sec. 21155D

 **Wednesdays:** 12:00-1:40 p.m., Sec. 21152D

 **Location (Both Sections):** ASC 331

 **Instructor: Jonathan Kotler**

 **Office:** ASC 202A

**Office Hours:** Tues. & Wed.: 9:30-11:30 a.m. and 2-3 p.m.; And by appointment.

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**Text: *The Law of Journalism and Mass Communication (5th or 6th edition),*** by Robert Trager, Joseph Russomanno, Susan Dente Ross and Amy Reynolds (Sage CQ Press). **PLEASE NOTE**: The use of this text is advisory only. **IT IS NOT REQUIRED.** However, if you feel that you need for some bolstering or memory jogging from your earlier Journalism 208 course, this is the text I would recommend. There ought to be plenty of used editions of this text floating around for purchase if you feel the need. On the other hand, taking good class notes and asking whatever questions you may have of the instructor, before, during and after class—including during his office hours, as well—ought to suffice to fill any knowledge gap that may exist since you took Journalism 208.

**Introduction:**

The touchstone of all mass communications law in this country is the First Amendment to the Constitution of the United States, a so-called “living document,” now in its third century of “life.” It is virtually impossible to have any rational understanding of the law governing the press without at least a working knowledge of the First Amendment and how it is related to the other provisions of the Constitution and other laws and legal theories with which the media must deal on an ongoing basis. Moreover, it is the First Amendment that separates communications law in the United States from communications law in every other country in the world. Repeat: every other country in the world.

Unfortunately, in recent years, partly as a result of press conduct, partly as a result of changes in the rules governing media ownership, partly a result of the expansion of non-traditional media, but mostly as a result of increased government secrecy, mixed liberally with pathological doses of paranoia, there have been spawned numerous restrictive judicial and administrative decisions, as well as legislative reaction to media (especially electronic media) which too often seem as intent on making the news as reporting it.

The focus of this semester, therefore, will be to examine various aspect of the conflict (to the extent there is one) between the First Amendment, on the one hand, and other competing societal interests, on the other. This will include, as it must, consideration of the fact that while, in the United States, the First Amendment is a venerated icon of what it means to be an American, to the remainder of the world, the First Amendment and all of its protections, is merely a local ordinance whose protections end at our country’s borders.

**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.”

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. And with increasing frequency, this means at least a passing acquaintance with the laws of other countries, as well.

And while some would have you believe that in this new world of the Internet and so-called “cyber law,” that new technology is changing the law, they are badly misinformed. Technology, new or otherwise, whatever it may be, adapts to the law, not the other way around. If something is defamatory if printed in a newspaper, it is also defamatory if it appears in a blog on the Internet. The same holds true for violations of intellectual property, invasions of privacy, and on and on, the communications delivery platform being irrelevant.

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. This will serve not only as a “heads up” for all of you, but also as a reminder, as well, that without a knowledge of what is going on in the law, you’ll be missing out on some very big stories, and, depending upon 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 to 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 media law related cases and stories to discuss. All contributions in this regard will be gratefully accepted.

That said, Journalism 408 (which is being taught this semester for the final time—it and Journalism 208 being combined into a single four (4) unit course, Journalism 462, beginning next semester—has always suffered from an internal difficulty. To put it bluntly, because many of you have had different instructors in your introductory media law course (Journalism 208), and because there has been precious little oversight of both the instructors and the course itself, you come to this course possessing radically different levels of knowledge and expertise depending upon how and/or what your Journalism 208 instructor included and emphasized in his/her course. This fact makes teaching 408 very difficult, because, from the outset, the instructor is unable to assume any familiarity with any particular area of the wide scope of disparate subjects that make up media law. Because of this, the first part of the semester will be spent playing “catch up,” to get everyone on the same page. Once this is accomplished, we will focus the remainder of the semester on one of the biggest issues in media law as we continue on into the 2020 election cycle, and that is: the law of privacy and the use of personal data, though, as we will attack it, it will encompass more than that.

Specifically, we will be looking at privacy and the individual citizen, which will require a review not only of many of the new technologies that, as some have suggested, have made privacy into an anachronism, or something that would better be taught in a media history class, but also, the rise of the new tech oligarchies—your friends at Facebook, Google, Amazon, and the like--and the effect they have had on individual privacy. And because privacy in the United States is treated so differently from privacy elsewhere (In the U.S., the regulation of privacy has been mostly left to the states, and, arguably, is for the most part not protected by the federal Constitution, while in the European Union, for instance, privacy is treated as a fundamental human right), we will also study and contrast the law of privacy in the U.S. and laws outside of our borders. (Remember: the internet neither respects nor is bound by international borders.) This will mean that in addition to local legislatively initiated laws on privacy, we will also study such things as personal and subject matter jurisdiction, anti-trust, copyright, and (national) security, among other issues.

That’s a lot to hope to accomplish within the confines of a 16 week semester and a 2 unit course, but with your diligence, it can be done.

 Let’s begin by assessing where we are:

 There is a lot of talk about privacy in America today—as would befit the country that invented the concept of privacy as a protectable right—and yet, it seems that the more we talk about privacy, the less we have.

 Certainly, when measured against the protection of privacy in the developed world—and in the European Union (“EU”) particularly—we don’t have much.

 How come?

 Searching for the answer to this question will be the focus of this class, once we get everyone caught up. Hopefully, by the time we have concluded in May, you’ll realize the truth in the words spoken by cartoonist Walt Kelly through his furry comic strip character Pogo (the possum) who, famously said, “We have met the enemy, and he is us.”

 Think not?

 O.K. How many of you have disabled the GPS devices on your smart phones? Or the cookies on your computer? Or did not click “I agree” or “I accept” the last time you downloaded a new piece of software or a new app?

 And the tragedy that was 9/11 only exacerbated this process.

 In the aftermath of the terrorist attacks on the United States, the American people wanted assurances that our government was doing everything possible to make them safe, and in doing so, would prevent a repeat of what had happened that awful Indian summer morning early in a new century that began with so much promise for the future. Forget, for the moment, that absolute protection against terrorism is impossible—just ask Julius Caesar, Abraham Lincoln, William McKinley, the Archduke Ferdinand, John F. Kennedy, Ronald Reagan or, more recently, innocent moviegoers in Colorado and Louisiana, or vacationers in Tunisia and Thailand, travelers in Brussels and Istanbul, shoppers in Nairobi, ordinary folks out for an evening’s fun and entertainment in Paris and Manchester and Dhaka and El Paso and Las Vegas, or people attending a Christmas party in San Bernardino, worshippers in Charleston or Pittsburgh, or schoolchildren seemingly everywhere.

 Among others.

 As a result, what we got was not the absolute protection we pleaded for. What we got was the illusion of protection, and as time goes on, even that illusion is proving, well, illusory.

 Case in point: The kabuki-like security theater we engage in before getting on an airplane since 9/11. Yes, we have to take off our shoes at the airport before we fly. And for sure, don’t bring toothpaste of a certain size on the plane with us. (Or, God forbid, a bottle of water, unless purchased AT the airport at exorbitant prices AFTER we pass through security. I even got stopped at Kansas City Airport for carrying a bottle of a famous locally produced barbeque rub.). But, as reports in the press have made clear, the TSA is about as effective at stopping terrorist threats as were Lincoln’s bodyguards. Which is about what you’d expect from folks who, in reality, are really one career move away from instead of asking us to remove our belts, to asking us “You want fries with that?”

 Security theater.

 Indeed, immediately following 9/11, when the government security apparatus (greatly aided and abetted by the corporations who had so much to gain from supplying the government) were just gearing up, worried civil libertarians were asking, “How much liberty would you give up in the name of security?” Most Americans, ignoring both the reality that absolute security could never be guaranteed, in addition to the centuries’ old wisdom of Benjamin Franklin, replied that they’d give up whatever was asked of them. “Just make us safe,” they pleaded.

 Two centuries earlier, Franklin had said, “Those who give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.”

 Wise man, that Franklin.

 Unfortunately, in the years since 9/11, our government has created what is, in essence, *The Surveillance State*. British novelist George Orwell had missed it by more than a quarter of a century, but essentially, he got it right.

 And it will only get worse.

 For a 30 year period between the late 1940s and the late 1970s, Americans in the millions turned on their (radio and then their) television sets to be amused by a hidden camera reality show cum comedy show called *Candid Camera*, which was the brainchild of TV pioneer Allen Funt. Its premise was that you never knew when you’d be caught on camera doing something stupid or embarrassing. Accordingly, it’s advertising tag line was, “Smile, you’re on *Candid Camera*.”

 Which is a close paraphrase to the words or smiley face pictographs that appear on surveillance cameras set up at traffic intersections, department store dressing rooms, and public spaces the length and breadth of this country. And if the omnipresence of surveillance cameras, the stealing of our email, the taking of our telephone metadata, the cataloging of our library records and our credit card purchases, the hacking into our digital data banks and use of infrared satellite technology weren’t enough of an intrusion upon what we used to call “our privacy,” well, welcome to the Age of the Drone.

 So, why am I not smiling? And more to the point, why are you?

 And that’s just for the invasions of privacy committed by the government. We haven’t yet begun to speak about those ubiquitous private sector invaders of our privacy, endeavoring, even as you read this, to sell information about you that even your parents aren’t aware of. You all know them. Most of you probably couldn’t even conceive of life without them. They are part of your daily lives, and I do mean *daily*. We’re speaking here of the likes of Facebook, Google, Twitter, Amazon and their fellow travelers.

 The folks you—each of you—have enabled.

 Depending upon your particular point of view, many would identify Vladimir Putin as public enemy number one when it comes to being a threat to life in America as we have known it to be. But for me, it wouldn’t be Putin. It would be Mark Zuckerberg.

 Why? Because Putin is aware of the consequences of what he does and has shown that he is smart enough to push only as far as he thinks we and the remainder of the West will let him. Yes, there is always the danger that he will overreach, especially given the apparent unbalanced relationship that he enjoys with our President, but, as must be obvious, he’s a smart guy.

 But, Zuckerberg? Sure, he’s smart, too, but as his frequent visits before various congressional committees, not to mention appearances made on his seemingly never ending *“mea culpa”* speaking tour have made obvious, he hasn’t a clue about the consequences of what he has unleashed, being focused solely on increasing his personal wealth (he is the world’s 5th richest person) and his company’s already vast profits.

 (Fun fact: Facebook currently has more followers—2.4 billion--than **any** of the world’s religions.)

 Worse, the Facebooks of the world know what they know about you in part because of what you do, but to an even larger degree because of what you have given them permission to do, hence Europe’s data protection laws which the United States has been reluctant to follow, leaving it to individual states such as California, and more recently, New York, to attempt to go it alone in reining in the awesome more of these mostly unregulated and unelected tech giants.

 Thus, as we embark on this semester’s survey on the state of privacy today, chew on this one: Is there any fact about you—anything at all—that couldn’t be found out by someone—be it government, terrorist, tech company or lone hacker—using today’s readily available technology?

 If you’ve answered in the affirmative, either your kidding yourself or the “fact” in question just isn’t that important, which means, in the private sphere at least, that the disclosure of it cannot be made profitable by others.

**Key Semester Dates and Week by Week Calendar\*\***: (Note: All chapter references are to course text)

**The first date each week is for the Tuesday section, the second for the Wednesday section**

 January 14/15: Overview of the American court/judicial system

 **Semester Research Project Assigned**

 January 21/22: The Meaning and Scope of the First Amendment

 January 28/29: Broadcasting and the Regulation of Electronic Media

 February 4/5: Media ownership and the Communications Act of 1996

 February 11/12: TBD

 February 18/19: TBD

 February 25/26: **First Mid Term Examination**

 March 3/4: 1984: The surveillance state: Are we there yet?

 March 10/11: Privacy, an overview

 March 17/18: Spring Break. No class.

 March 24/25: Film: What happens in Vegas, stays in Vegas? Or does it?

 March 31/April 1: Privacy and the government

 **Extra Credit news story packets to be turned in by start of class.**

 April 7/8: Privacy and Technology

 April 14/15: Revenge of the Golden Bear

 April 21:22: Privacy beyond the United States

 **Semester Research Project papers to be turned in by start of class**

 April 28/29: **Class Debate (Oral Presentations)**

 May 8 (11 a.m. to 1 p.m.) **Debate for Wednesday class**

 May 13 (2 p.m. to 4 p.m.). **Debate for Tuesday class**

**\*\*. All dates above subject to change due to unforeseen circumstances.**

**Grading:**

There will be three (3) graded assignments in this course. The midterm examination is worth 100 semester points. The research paper assigned at the beginning of the semester is worth 250 points and each student’s participation in the class debates at the end of the semester will be worth an additional 50 points. Total semester points: 400

**EXTRA CREDIT OPPORTUNITY: In addition,** any student who brings to the class for class discussion and submits a total of five (5) currently reported (that is, during the week preceding the class session for which it is submitted) media law related stories through and including the class meetings of April 16/17 (but not including the weeks scheduled for midterm examinations) shall earn an additional twenty (20) extra credit points for the semester. In order to receive such extra credit, as aforesaid, each such story must be submitted in writing (email or hard copy) to the course instructor in advance of the class in which it is to be discussed. **There will be no partial credit awards given**. It is five stories for 20 semester points credit. **Fewer than five submitted stories will earn no credit.**

Numeric grades on the individual 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 600) = a semester grade of “A-“; 340 points (or 85% of 400) = a semester grade of “B+”; 320 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”; 260 points (or 65% of 400) = a semester grade of “C-“; 240 points (or 60% of 400) = a semester grade of “D”; 239 points and below = a semester grade of “F”.

**Late Papers:**

Of your three graded assignments, three of them will take place in class. Accordingly, the only graded assignment which can possibly be turned in late, if permitted, is the semester research assignment which is due on or before the start of the class meeting on April 21/22.

And unlike the case in many of your other journalism classes, in this class, late papers will be accepted, but only under the conditions explained below.

While either of the writing assignments may be turned in late, there is a rather severe grade penalty assessed for so doing and you may wish to consider whether it is worth the cost. Specifically, if the semester research project is turned in late, it will be penalized one grade for each day or part thereof that it misses its deadline. For example, if your semester research paper is due on Tuesday, April 21 at noon, and is turned in at 5 p.m. on that day, and the paper was given a grade of “B”, with the one grade per day penalty, it would now receive a grade of “B-.” Turn it in on the following Thursday, April 24, at 5 p.m., and it would lose three grades and be given a grade of “C.”

This policy puts a premium on your ability to make good choices and to plan your time both wisely and well ahead. Given that the semester research assignment will be assigned the first week of class this semester, this should not be a problem. Do not let it become one.

**A few words about class attendance, in class cell phone use and computer surfing**

 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 a conflict becomes apparent,** it is incumbent upon the student to inform the professor, instructor (or advisor) in the course of activity who 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, activity or 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

In addition, because there are two sections of Journalism 480 being offered this semester and each will be covering the same course material each week, you have the option, if you are caught in a conflict situation, of attending the section of the course in which you are NOT registered as long as you contact the course instructor prior to doing so.

**Please note: this is a “phubbing” free zone.**

Meaning?

Meaning that the use of cell phones during class (including the consulting of same to receive and/or send text messages or emails) **is strictly prohibited.** When class begins your cell phones should be turned off and should remain that way until class is over. 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 in class, or to look up points of law as directed by the course instructor. **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.

**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. A graduate also 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 (in chronological order) 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 to the late Dr. John R. Hubbard, then USC’s President. Away from campus, Kotler enjoys spending time with his grandchildren (four grandsons and one granddaughter) and his 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, who currently works as a senior vice president for Bridge Development Partners. In addition, he is an avid sports fan, and depending upon the time of year, can be found following his beloved San Francisco 49ers, Baltimore Orioles and London’s Fulham Football Club, being a long-time season ticket holder of the latter.

**Add/Drop Dates for Session 001 (16 weeks: 1/13/20 – 5/1/20)**

**Friday, January 31:** Last day to register and add classes for Session 00S1

**Friday, January 31:** Last day to drop a class without a mark of “W,” except for Monday-only classes, and receive a refund for Session 001

**Tuesday, February 4**: last day to drop a Monday-only class without a mark of “W” and receive a refund for Session 001

**Friday, February 28:** 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 10:** Last day to drop a class with a mark of “W” for Session 001

**Policies and Procedures**

**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 this semester shall earn academic extra credit herein of an amount equal to 1 percent of the total available semester points for this course. 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 the evaluation form provided by the Career Development Office. The form should be filled out by the intern supervisor and returned to the instructor at the end of the semester. No credit will be given if an evaluation form is not turned into the instructor by the last day of class. Note: The internship must by unpaid and can only be applied to one journalism or public relations class.

**Statement on Academic Conduct and Support Systems**

**a. Academic Conduct**

*Plagiarism*

Presenting someone else’s ideas as your own, either verbatim or recast in your own words - 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://policy.usc.edu/scampus-part-b/>). Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct (<http://policy.usc.edu/scientific-misconduct/>).

*USC School of Journalism Policy on Academic Integrity*

The following is the USC Annenberg School of Journalism’s policy on academic integrity and repeated in the syllabus for every course in the school:

“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 & Community Standards (SJACS), as per university policy, as well as journalism school administrators.”

In addition, 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.

**b. Support Systems**

*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/rsv

*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