

Library Laws for the Mobile Web Environment

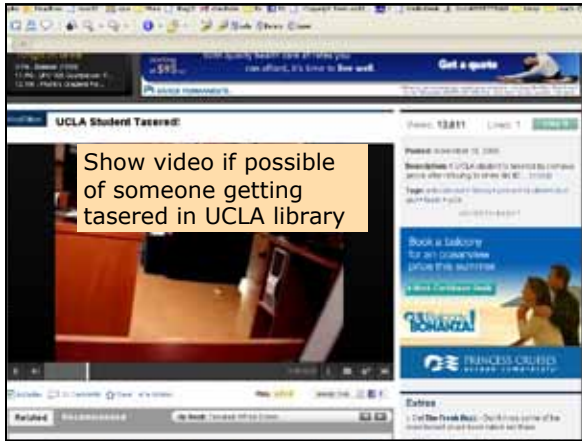
Library Laws in the Mobile Web Environment
An  **webinar**



Mary Minow
J.D., A.M.L.S.

February 18, 2010






Show video if possible of someone getting tasered in UCLA library

Legal Disclaimer

- Legal information
- **Not** legal advice!



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Library Laws for the Mobile Web Environment

Mobile Patrons and the Internet

I. Cameras



II. Objectionable material

- A. Posting
- B. Following
- C. Viewing



III. Disability access – Kindles, etc.



I. Cameras

Patron asks to take photos for travel blog.

Library says:

- 1) Yes.
- 2) Yes, for private use.
- 3) Yes, but no patrons without their permission.
- 4) No.



Are any of these answers legally correct?

Guiding Principles



- Follow your library's policy
- Treat all users the same
- Check with lawyer before restricting photos

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Library Laws for the Mobile Web Environment

1. Library Says Yes

Library is public place.



Deal with abusive behavior under conduct codes.

What About Bad Uses?

Q: What if photographer is critical of govt and will post with derogatory comments?



Drawing by AndyRob CC Attribution 2.0
www.flickr.com/photos/aroberts/3056047060/

What About Bad Uses?

Q: What if photographer is critical of govt and will post with derogatory comments?



A: That's her First Amendment right.

****Focus on photo taking, not uses**

Drawing by AndyRob CC Attribution 2.0
www.flickr.com/photos/aroberts/3056047060/

Library Laws for the Mobile Web Environment

2. Yes, for Private Use

... or "noncommercial use"

No longer meaningful...
blogs, ads...

Use conduct policy.



California law forbids some *uses* of photos

Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person's prior consent ... shall be liable for any damages sustained.

Cal. Civ. Code § 3344(a)

Commercially sponsored

use of a name, voice, signature, photograph, or likeness in a commercial medium shall not constitute a use for which consent is required under subdivision (a) solely because the material containing such use is commercially sponsored or contains paid advertising. Rather it shall be a **question of fact whether or not the use of the person's name, voice, signature, photograph, or likeness was so directly connected** with the commercial sponsorship or with the paid advertising as to constitute a use for which consent is required under subdivision (a).

Cal. Civ. Code § 3344(e)

Library Laws for the Mobile Web Environment

3. Yes, but not without Patrons' Permission.

Broad prohibition.
Need to justify. See attorney.

Hard to enforce.

No audible click.



Camera Phone Predator Alert Act ([H.R. 315](#)) (Rep. Pete King R-NY) would require audible click

Generally, Photographers Do Not Need Consent in Public Places

Taking the Photo

Using the Photo



Attribution-Noncommercial-Share Alike 2.0 Generic
www.flickr.com/photos/herzogbr/1658397241/

newsworthiness:

"a use of a name, voice, signature, photograph, or likeness in connection with any news, public affairs, or sports broadcast or account, or any political campaign, shall not constitute a use for which consent is required."

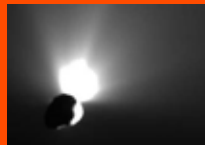
Cal. Civ. Code § 3344(d)

4. No Photography

Need to justify. See attorney.

Some justifications:

No Flash (bothers users)



Library Laws for the Mobile Web Environment

Library Responsibility for Patron Privacy?




Expectation of privacy?

- ✓ Public restrooms and upskirting
Calif. Penal Code 647(j) **CALL POLICE**
- ✓ Library records
Calif. Govt Code 6267

-Possibly at closed children's programs


✗ mere presence in library not protected

Video voyeurism laws <http://tinyurl.com/videovoyeur>



Library Webcams


Carefully consider



Invasion of Privacy? Google street view lawsuit

- Court: No invasion of privacy
- No disclosure or private facts

Test:
highly offensive to reasonable person



Boring v Google, 09-2350 (3rd Cir. Jan. 28, 2010)(not precedential) www.ca3.uscourts.gov/opinarch/092350np.pdf

Library Laws for the Mobile Web Environment

Copyright Issue

Library is not the copyright police



Could be fair use
Could be another
legally justified use

See also *Hunt v. Hillsborough County* (pending)
suit against law library that prohibited patrons from using
their own scanners
news.justia.com/cases/featured/florida/flmdca/8:2007cv01168/202663/

... But Library Must Honor Contracts re Exhibits, Programs

Protect commercial interest of
exhibitors, performers

... How to enforce?



(don't sign contracts you can't honor)

For discussion of On the Road exhibit, see
williampatry.blogspot.com/2006/02/on-road-again.html

Best to Focus on Bothering Patrons

"Taking photos or videos of
persons in the library who
ask not to be photographed
will be deemed
unacceptable behavior for
purposes of enforcing the
Library's Customer Code of
Conduct."



Library Laws for the Mobile Web Environment

The TSA Blog
Transportation Security Administration

Can I Take Photos at the Checkpoint and Airport?



We don't prohibit public, passengers or press from photographing, videotaping, or filming at screening locations. You can take pictures at our checkpoints as long **as you're not interfering with the screening process or slowing things down. We also ask that you do not film or take pictures of our monitors.**

However... while the TSA does not prohibit photographs at screening locations, local laws, state statutes, or local ordinances might. Your best bet is to call ahead and see what that specific airport's policy is.

www.tsa.gov/blog/2009/03/can-i-take-photos-at-checkpoint-and.html

Sample Library Policy

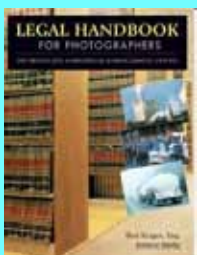
Filming and photography is allowed if it does not interfere with the delivery of library services.

Persons filming or taking photographs on library premises are responsible for gaining all necessary permissions to use the photos.

Taking photos or videos of persons in the library who ask not to be photographed is unacceptable under the Library's Code of Conduct.

Library staff may terminate any photo session that violates Library policies or appears to compromise public safety or security.

Further Information



Legal Handbook for Photographers
Bert Krages, Esq. (Amherst Media: 2007)

Esp. sections on photography in public places

www.krages.com/lhp.htm

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Library Laws for the Mobile Web Environment

II. Objectionable Material

A. POSTING

Patrons retweet, facebook, flickr...
... objectionable?



Yeah, it sucks
RT@YourLibrary Children's
Program <http://bit.ly/eA8N>



Somethingstartedcrazy CC: Attribution-Noncommercial-Share Alike 2.0
www.flickr.com/photos/somethingstartedcrazy/1425891112/

II. Objectionable Material

A. POSTING

Third party sites – have terms of service (can be more subjective than you can as government agency!)
... but you have no legal basis to object. Use as outreach opportunity if possible.



Yeah, it sucks
RT@YourLibrary Children's
Program <http://bit.ly/eA8N>



Somethingstartedcrazy CC: Attribution-Noncommercial-Share Alike 2.0
www.flickr.com/photos/somethingstartedcrazy/1425891112/

II. Objectionable Material

B. FOLLOWING

Offensive site is following the library tweets



Library Laws for the Mobile Web Environment

II. Objectionable Material

B. FOLLOWING




Options: Do nothing
Hide followers
Remove if security risk

... Be careful in removing followers


Your library's followers

II. Objectionable Material

C. VIEWING

Library laptop, wireless network
... use library acceptable use policy

Patron's laptop, smartphone (no library network)
Child Porn - Call Police
Displaying Harmful to Minors - Library Policy




On Patron's phone or laptop

Williams v Grand Rapids Public Library, 2007 U.S. Dist. LEXIS 83443 (W.D. Mich. Nov. 9, 2007)
http://tinyurl.com/williamsgrand
http://tinyurl.com/patronlaptop

Other Objectionable Material on User's Device

Protected under the umbrella of the First Amendment



Violent	Inappropriate
Disgusting	May lead to illegal behavior
Profane	as well as
Hateful	Beautiful
Indecent	Poetic

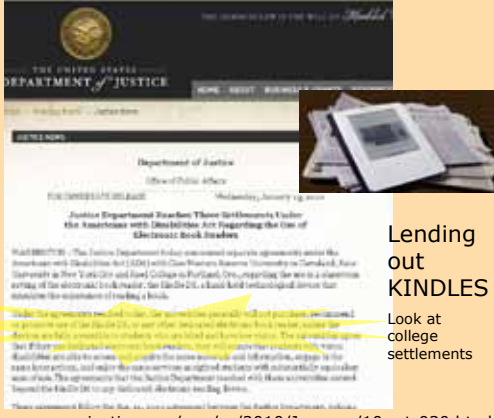
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III. Disability Access and Mobile Devices

Essentially – must make material available in more than one mode

If video, must have text, or make it available reasonably soon



Lending out KINDLES
Look at college settlements

www.justice.gov/opa/pr/2010/January/10-crt-030.html

Summary

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Thank You!



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