

COMMUNICATION AND LAW

IE University

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Degree course: SECOND

Semester: 2º

Category: BASIC

Number of credits: 6.0

Language: English

PREREQUISITES

No prerequisites are necessary.

SUBJECT DESCRIPTION

The course will guide the students through the legal regulation of communication as a pillar for democracy. Three aspects will be covered: quality of information, limits to the dissemination of information due to the nature of its content, and limits to the usage of information due to its ownership.

Concerning the quality of information, the course will analyse fake news, describing the legal and technical approaches to prevent their dissemination, and the problems raised by the selection of information through algorithms.

Regarding the limits based on information content, the lectures will study the social and individual reasons that underpin the limitation, with reference to collective values (national security, freedom of information, blasphemy, hate speech) and individual values (honour, defamation, image, privacy). The constitutional protection of information in EU Member States, situated in the international treaties framework, will be analyzed.

Apropos the rights of the creators or producers of the information, lectures will cover issues related to intellectual property in the digital age and the role of the Internet. In addition to an in-depth overview of each field, we will deal with practical material, such as sample terms and condition forms, licences, statutes, excerpts of real cases, and trivia to capture the students' interest and provide valuable insights into real-world legal practice. We will analyze the complexities of modern intellectual property law, including topics such as registration procedures, duration of rights, protection from infringement, current concerns in each field, and international trends and developments.

OBJECTIVES AND SKILLS

- Understand the interaction between different human rights (freedom of expression, privacy, right to personal and family intimacy, libel, obscenity, copyright, free press/fair trial) and communication activities, business and technologies.
- Become aware of the balance between free speech interests and state interests; the balance between freedom and state intervention in the media activity.
- Understand the applicable legal restrictions that will determine, limit or even prevent the exploitation and use of audiovisual works and contents.
- Learn the mechanisms provided by the applicable law in order to maximise the economic and company exploitation of such works and contents through the analysis and usage of consent and licenses.
- Critical thinking skills, through the analysis of the tension, checks and balances applicable to each right.
- Legal and institutional information research, management and analysis skills.
- Licencing intellectual property works skills.

METHODOLOGY

To organize the student's learning experience, the course (6 ECTS, 30 sessions) will be organized in two parts, focusing each one in a different aspects of information. The first part will study the internal aspect, where the relevant issue for information usage and transmissibility is the nature of its content. The second part will refer to external aspects to information, where its usage and transmissibility depend on the rights exercised over it. Each part is divided in modules:

- Modules 1 to 6 (sessions 1 to 16) will analyse general aspects, the quality of information, its production and dissemination and its relationship with human rights. In this first part, the conditions based on the transmissibility and dissemination of the information depend on the nature of its content.
- Modules 7 to 11 (sessions 17 to 30) will be used to study copyright, analysing in this case the information as an element subject to property rights. Hence, production and dissemination depend here not on the nature of the information but on the rights exercised over it.

Every module will be initiated by an asynchronous class, where the students shall study the concepts that will be presented in it. Readings and guidance will be provided to accomplish the asynchronous classes. In this way, the student will be prepared to follow the content of the face to face sessions.

The 11 modules are:

1. Introduction to freedom of expression and of press. Internet and the digital.
2. Quality of information: fake news and algorithms.
3. Limits based on social values (i): national security, FOI (Freedom of information) and the right to know.
4. Limits based on social values (ii): blasphemy, hate speech.
5. Limits based on individual values (i): reputation, defamation, image.
6. Limits based on individual values (ii): privacy.
7. Introduction to intellectual property rights: copyright, patents, trademarks, trade secrets.
8. Copyright authors and works.
9. Copyright activities and consent. Terms and conditions.
10. Copyright limitations.
11. Copyright termination. Copyright infringements.

Note: If during the course a new important ruling applicable to the subject is issued by a court, it could be included as additional material. As the case may be, the text will be delivered to all students.

Teaching methodology	Weighting	Estimated time a student should dedicate to prepare for and participate in
Lectures	20.0 %	30 hours
Discussions	26.67 %	40 hours
Exercises	13.33 %	20 hours
Group work	20.0 %	30 hours
Other individual studying	20.0 %	30 hours
TOTAL	100.0 %	150 hours

PROGRAM

SESSIONS 1 - 2 (LIVE IN-PERSON)

Module 1. Introduction to the subject.

The first two sessions of the course will consist in a lecture to introduce the subject and the topics that will be studied. The concept and origin of freedom of expression, its historical foundations and contemporary placement within human rights and the digital society will be the subject of the lecture.

Book Chapters: John Stuart Mill: Of the Liberty of Thought and Discussion (ced)

Multimedia Documentation: Universal Declaration of Human Rights

Multimedia Documentation: European Convention on Human Rights

SESSION 3 (ASYNCHRONOUS)

Module 2. Quality of information.

Module preparation: learning new concepts. Students will research two topics, that will be addressed in the next two sessions: fake news and algorithm positioning of information. It is recommended that students begin their research reading the Report of the independent High level Group on fake news and online disinformation, mandated by the European Commission, and the article 'Social Media Algorithms: Why You See What You See', both included as documentation.

Multimedia Documentation: A multi-dimensional approach to disinformation - Report of the independent High level Group on fake news and online disinformation

Article: Social Media Algorithms: Why You See What You See (2 GEO. L. TECH. REV. 147 (2017))

SESSIONS 4 - 5 (LIVE IN-PERSON)

Module 2. Quality of information.

Lectures. These sessions will focus on the degradation of quality information. They will be used to analyse the fake news phenomena, its relationship with democracy, and the algorithm society with its possible biases.

SESSION 6 (ASYNCHRONOUS)

Module 3. Limits of freedom of expression based on social values: national security, freedom of information (FOI) and the right to know.

Module preparation: learning new concepts. Students will prepare the module reading the proposed material. The two concepts that will be researched during this session are 'national security' and 'freedom of information'. Regarding national security, the landmark case before United States Supreme Court, *New York Times v. United States*, is provided as complementary documentation to this syllabus. Concerning freedom of information, a good entry point to its analysis is provided by the UNESCO in its webpage [About Freedom of Information \(FOI\)](#).

Practical Case: New York Times v. United States (s-c)

Multimedia Documentation: About Freedom of Information (FOI)

SESSIONS 7 - 8 (LIVE IN-PERSON)

Module 3. Limits of freedom of expression based on social values: national security, freedom of information (FOI) and the right to know.

Lectures. The limits related to the values of national security, freedom of information (FOI) and the right to know will be the topics of these sessions. National security is a common excuse for not handling information to the public who, under a democracy, should be able to access the necessary information to hold governments accountable for their acts.

SESSION 9 (ASYNCHRONOUS)

Module 4. Limits of freedom of expression based on social values: blasphemy and hate speech.

Module preparation: learning new concepts. Students will research two new concepts, which are also limits to freedom of expression based on values of the collectivity: blasphemy and hate speech. They will prepare the module with three readings: a first reading will be the chapter entitled 'Secularism' of Tzvetan Todorov's book 'In Defence of the Enlightenment', and two court judgments where hate speech was at the core of the decision: United States Supreme Court *Brandenburg v. Ohio* (1969) and European Court of Human Rights *Jersild v. Denmark* (2011). Students are encouraged to research other sources where the two concepts, blasphemy and hate speech, may be described.

Book Chapters: Tzvetan Todorov: In Defence of the Enlightenment Chapter 4. Secularism (ced)

Practical Case: Brandenburg v. Ohio (s-c)

Practical Case: Jersild v. Denmark (s-c)

SESSIONS 10 - 11 (LIVE IN-PERSON)

Module 4. Limits of freedom of expression based on social values: blasphemy and hate speech.

Lectures. The topics of these sessions will be blasphemy and hate speech. Explanations will cover the state separation of powers and secularism, as democratic values rooted in the Enlightenment ideas.

SESSION 12 (ASYNCHRONOUS)

Module 5. Limits of freedom of expression based on individual values: reputation, defamation and personal image.

Module preparation: learning new concepts. Students will prepare the module reading the proposed material. The two concepts that will be researched during this session are related to individual values: the needed respect for personal reputation, hence the interdiction of defamation, and the right to personal image. The reading in this session will consist in the well-known European Court of Human Rights case *MGN Limited v. the United Kingdom* (2011), where the “The Daily Mirror” newspaper carried on the front page an article headed “Naomi: I am a drug addict”, placed between two colour photographs of Ms Naomi Campbell, a well-known model. Students are encouraged to research other sources where the two concepts, reputation and right to personal image, may be described.

Practical Case: MGN Ltd. v. United Kingdom (s-c)

SESSIONS 13 - 14 (LIVE IN-PERSON)

Module 5. Limits of freedom of expression based on individual values: reputation, defamation and personal image.

Lecture. The topics of these sessions will be the individual values of reputation and personal image.

SESSION 15 (ASYNCHRONOUS)

Module 6. Limits of freedom of expression based on individual values: privacy.

Module preparation: learning new concepts. Students will prepare the module reading the proposed material. The concept that will be researched during this session is privacy. Some of the expressions or keywords that may be used for the research are 'privacy', 'Mario Costeja's case', 'cookies', 'the right to be forgotten', 'GDPR' and 'informed consent'. Students are encouraged to research in Internet and understand the concept of privacy and its practical implications.

SESSION 16 (LIVE IN-PERSON)

Module 6. Limits of freedom of expression based on individual values: privacy.

Based on the concepts researched by the students in prior session, during this one several privacy cases will be analysed (Cambridge Analytica, Whatsapp, Taylor v. Google, Amazon lobbying...).

SESSIONS 17 - 18 (LIVE IN-PERSON)

Module 7. Intellectual property introduction.

Lecture. Historical development of intellectual property will be introduced focusing on the four main fields where it has ended: copyright, patents, trademarks and trade secrets. The differences between the four different modalities of intellectual property will be explained, with a special attention to the boundaries that will allow the students distinguish between them.

SESSION 19 (ASYNCHRONOUS)

Module 8. Copyright authors and works.

Module preparation: learning new concepts. Students will use this session to research the answer to two questions: (i) What is understood by a literary, artistic or scientific work and (ii) who can be considered as an author of a copyrightable work. To answer the first question, they will rely on the explanations provided in sessions 17 and 18 and in the proposed readings for this one. To answer the second question, they should research for Naruto case (monkey selfie) and read the proposed documentation related to artificial intelligence as author.

Book Chapters: Raymond Williams: The Romantic Artist (chapter from the book Culture and Society) (ced)

Article: Artificial intelligence and copyright (pages 14-19) (Wipo Magazine, Nº 5, October 2017)

SESSIONS 20 - 21 (LIVE IN-PERSON)

Module 8. Copyrights authors and works.

Lecture. The sessions will be used to understand literary, artistic or scientific creation, as single or collective works or as open processes. The general rule applicable to intellectual property works (all rights reserved, by default) will be explained.

SESSION 22 (ASYNCHRONOUS)

Module 9. Understanding copyright activities and consent.

Module preparation: learning new concepts. Students will use this session to research the terms 'reproduction', 'distribution', 'public communication' and 'transformation' (or alteration) of an intellectual work. Their research should lead them to understand what are the activities made by a person when he/she reproduces, distributes, public communicates or alters an intellectual work.

SESSIONS 23 - 24 (LIVE IN-PERSON)

Module 9. Understanding copyright activities and consent.

The rule of 'all rights reserved' marks the default initial point for the exploitation of an intellectual property work. The authors may assign one or more of their rights to a third party through consent, which may be addressed to a specific person (contracts) or to the public (terms and conditions, licences). The methods to allow the legal use of a work will be explored in these sessions.

Multimedia Documentation: Creative Commons Attribution 4.0 International Public License

Multimedia Documentation: Instagram Terms of Use

SESSION 25 (ASYNCHRONOUS)

Module 10. Copyright limitations.

Module preparation: learning new concepts. Students will use this session to research two concepts and to identify the similarities and differences between both: (i) 'limitations and exceptions to copyright' and (ii) 'fair use'. The goal is to be able to explain in simple words what is 'a limitation to copyright' and what is 'copyright fair use'.

Practical Case: Directive 2001/29/EC of The European Parliament and the council on the harmonisation of certain aspects of copyright and related rights in the information society (s-c)

SESSIONS 26 - 27 (LIVE IN-PERSON)

Module 10. Copyright limitations.

Lecture. Explanation of the different limitations and exceptions to copyright.

SESSION 28 (ASYNCHRONOUS)

Module 11. Copyright termination. Copyright infringements.

Module preparation: learning new concepts: copyright termination and copyright infringement. Students should find explanation of both concepts in the Project Gutenberg case, where the allegations of German publishers against the website <https://www.gutenberg.org/> were based on the inexistence of copyright termination, therefore a copyright infringement. They obtained a first judgement ordering the non public accessible of the website within the territory of the Federal Republic of Germany, although according to the Project Gutenberg Literary Archive Foundation, this first judgment has been superseded and the block only affects three authors.

Practical Case: Judgement of the Project Gutenberg case (s-c)

SESSIONS 29 - 30 (LIVE IN-PERSON)

Module 11. Copyright termination. Copyright infringements.

Lecture. During the final sessions, the topics explained will be copyright termination (works under public domain) and copyright infringement.

BIBLIOGRAPHY

Recommended

- Yochai Benkler. (2006). *The Wealth of Networks. How Social Production Transforms Markets and Freedom*. Yale University Press. ISBN 9780300110562 (Digital)
- James Gleick. (2011). *The Information. A History. A Theory. A Flood..* Pantheon Books. ISBN 9780375423727 (Printed)
- Adrian Johns. (2009). *Piracy. The Intellectual Property Wars from Gutenberg to Gates..* The University of Chicago Press. ISBN 9780226401188 (Printed)
- Lawrence Lessig. (2004). *Free Culture. How big media uses technology and the law to lock down cultures and control creativity.* The Penguin Press. ISBN 1594200068 (Digital)
- Robert P. Merges. (2011). *Justifying Intellectual Property.* Harvard University Press. ISBN 9780674049482 (Printed)
- Peter Suber. (2012). *Open Access.* MIT Press. ISBN 9780262517638 (Digital)
- Carissa Véliz. (2020). *Privacy is power: why and how you should take back control of your data.* Bantam Press. ISBN 9781787634 (Digital)

EVALUATION CRITERIA

Evaluation method will be based in two parameters: 1) class participation, 2) individual assignments.

1. Class participation.

Informed Participation and contribution to the learning atmosphere will be evaluated up to 20% of the final grade. Beyond simply showing up, participation in class discussions and activities is an important component of this course. Recall that listening carefully is as important a component of participation as speaking. Please be aware of your own style of participation: if you find it difficult to speak up in class, push yourself to do so. If you realize you tend to dominate discussions, make a point of listening to others. Your participation grade at the end of the semester will be based cumulatively on your contributions over the course of the semester.

Demonstration during synchronous session that the student has accomplished the learning activities object of the asynchronous sessions will be clue to obtain a good evaluation in class participation.

Participation is graded using the criteria below (adapted from Martha L. Maznevski 1996 webpage at the University of Virginia available in the Wayback Machine:

https://web.archive.org/web/20071212204452/http://trc.virginia.edu/Publications/Teaching_Concerns/Spring_1996/TC_Spring_1996_Maznevski.htm

- The average level of participation usually satisfies the criteria for a "7", which would correspond to a "B".
- 0.0 - 4.9 grade: When present, not disruptive. Tries to respond when called on but does not offer much. Demonstrates very infrequent involvement in discussion.
- 5.0 - 6.9 grade: Demonstrates adequate preparation: knows basic reading facts, but does not show evidence of trying to interpret or analyze them. Offers straightforward information (e.g., straight from the reading), without elaboration or very infrequently (perhaps once a class). Does not offer to contribute to discussion, but contributes to a moderate degree when called on. Demonstrates sporadic involvement.
- 7.0 - 8.9 grade: Demonstrates good preparation: knows reading facts well, has thought through implications of them. Offers interpretations and analysis of reading material (more than just facts) to class. Contributes well to discussion in an ongoing way: responds thoughtfully to other students' points, thinks through own points, questions others in a constructive way, offers and supports suggestions that may be counter to the majority opinion. Demonstrates consistent ongoing involvement.
- 9.0 - 10.0 grade: Demonstrates excellent preparation: has analyzed readings exceptionally well, relating it to other material (e.g., other readings, course material, discussions, experiences, etc.). Offers analysis, synthesis, and evaluation of class material (e.g., puts together pieces of the discussion to develop new approaches that take the class further). Contributes in a very significant way to ongoing discussion: keeps analysis focused, responds very thoughtfully to other students' comments, contributes to cooperative argument-building, suggests alternative ways of approaching material and helps class analyze which approaches are appropriate, etc. Demonstrates ongoing very active involvement. Demonstrates that he/she has fulfilled the goals set forth in asynchronous sessions.

2. Individual quizzes/essays.

Individual quizzes/essays will weight a 80% of the final grade. The students will have to respond to a quizz (short answers to specific questions) or prepare a short essay regarding the following content:

- Freedom of expression and limits due to social values (content of modules 1, 2, 3 and 4).
- Freedom of expression and limits due to individual values (content of modules 5 and 6).
- Intellectual property and copyright (content of modules 7, 8, 9, 10 and 11).

Deadlines will under no circumstances be extended. All assignments not delivered before their deadline will be graded with a 0.

Retake policy

If a student does not reach the passing score, he/she will have to produce two essays (circa 1200 words) being the first one related to the content of modules 1 to 6 and the second essay related to the content of modules 7 to 11. Deadline for the essays will be the university retake exam date. In this case, the grade will be calculated 20% for class participation and 40% each essay. Each essay will be graded with a mark from 1 to 10 and in order to pass the subject, at least a 5 in each essay is required.

Criteria	Percentage	Comments
Class Participation	20 %	
Individual Quizzes	80 %	

PROFESSOR BIO

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Javier de la Cueva (Madrid, 1962) holds a Licentiate degree in Law, a Master in Philosophy and is Doctor of Philosophy at the Complutense University of Madrid.

He is associate professor in the Faculty of Philosophy at the Universidad Complutense de Madrid and at the IE School of Human Sciences and Technology. He also works as a researcher in European projects where he works in the sustainability and governance aspects of research infrastructures.

He is a practicing lawyer since 1989 and has handled amongst other cases the defence of free intellectual property licenses, the legality of diverse technological platforms and cases pro freedom of information. He is currently engaged in giving lectures and in writing about his specialization. He is a GNU/Linux user since 1998 and a systems administrator under this operating system since 2003. He writes his scripts in Python, enjoys n3 notation when modelling semantic web ontologies and organizes his activities in plain text files under version control (git). He is member of the Board of Directors of Fundación Ciudadana Civio, a Spanish entity internationally awarded for data driven journalism, and has been invited to appear as an expert in the Committee of National Security of Spanish Parliament due to his specialization in technology and law.

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OTHER INFORMATION