Overview

This course looks at how courts, legislatures, and regulators confront the Internet. Major topics include: how legally-enforceable contracts are made online; jurisdiction over online transactions; intellectual property rules around digital content such as music, video, and online texts; control over Internet domain names; liability of intermediaries such as Internet Service Providers and search engines; and online privacy protections. Legal rules designed for the physical world often fail to address the novel aspects of online activity. Law is tied to geography and sovereignty, while the Internet is global and virtual. The Net creates massive new opportunities for creativity, innovation, business activity, and human flourishing, but also new dangers. This course will examine how law and public policy have addressed the Internet challenge.

Instructor

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Materials

JAMES GRIMMELMAN, INTERNET LAW: CASES AND MATERIALS (Semaphore Press 2011)

This required text is available for download only at www.semaphorepress.com. (It is not available in hard copy.)

Semaphore Press uses a publishing model different from the traditional textbook publishers. I encourage you to read about Semaphore Press’s publishing approach on its website. This book has a suggested price of $30. This is a fantastic deal; comparable casebooks cost at least $100. I strongly urge you to pay at least the suggested retail price in order to keep high-quality educational material available at reasonable prices.

I will incorporate news articles and other real-time materials relevant to our discussions. It’s quite possible there will be significant developments during the course of the semester. Most class sessions will begin with “current events” that will highlight topics in the news.

Requirements and Grading

The class will be graded based on a midterm exam (20%), a final exam (30%), a paper (25%) and class participation (25%).
Syllabus

Unless told otherwise, you are expected to read the specified material prior to each class session.

The textbook often includes questions or problems at the end of readings. If I want you to prepare these for class discussion or submit answers in writing, that will be called out on the syllabus. Otherwise, use the questions/problems on your own to check your understanding of the material.

BUILDING BLOCKS

9/7 Basic Concepts

Introduction to the Internet and the legal system. How to read a case. The growth of online activity, and the challenges it poses for law.

Read: Grimmelman, pp. 7-10 (Introduction)

Grimmelman, pp. 13-16 (Lessig on “regulation”)


9/12 The Internet

How does the Internet actually work? How does its technical architecture create problems for legal enforcement?

Read: Grimmelman, pp. 30-38 (Internet Technologies)

Grimmelman, pp. 62-66 (Online Borders)

9/14 Law and Cyberspace

What should cyberlaw look like? Does the Internet require its own rules, or is existing law sufficient to address online issues?

Read: Grimmelman, pp. 39-48 (“Cyberspace”)

Prepare: Questions on Grimmelman p. 47

WHY AND HOW TO REGULATE ONLINE ACTIVITY

9/19 Cross-Border Enforcement

What happens when a government seeks to impose requirements on online activity that would not be acceptable in the provider’s home country?

Read: Grimmelman, pp. 49-57 (Law on a Global Internet)

Prepare: YouTube Abuse Problem, Grimmelman p. 61
9/21 Jurisdiction

Jurisdiction determines whether a particular court can hear a case. When a user in one location engages in an electronic commerce transaction with an online provider based elsewhere, what court or courts have authority to resolve disputes?

Read: Grimmelman, pp. 80-83 (Boschetto v. Hansing)
Prepare: Grimmelman, Boschetto question #5 (p. 84)

9/26 Online Speech

When do efforts to protect children and others from pornography, obscenity, and other inappropriate speech violate the First Amendment?

Read: Grimmelman, pp. 99-106 (Pornography)
Prepare: Grimmelman, Blue Ray Problem, pp. 96-98

9/28 ICANN and Internet Governance

The Internet Corporation for Assigned Names and Numbers (ICANN) oversees some aspects of the domain name system, but many see it the closest institution to a global government for the Net.

Read: Grimmelman, pp. 258-60 (The Domain-Name System)

Kenneth Neil Cukier, No Joke, ForeignAffairs.com, December 28, 2005,
http://www.foreignaffairs.com/articles/64240/kenneth-neil-cukier/no-joke

http://news.bbc.co.uk/2/hi/technology/8283310.stm

CONTROLLING ACCESS

10/3 Electronic Contracting

Basics of contract formation for software and online transactions. Shrinkwraps, clickwraps, and browserwraps. When does a click bind you to contractual terms?

Read: Grimmelman, pp. 163-171 (Form Contracts)
Prepare: ProCD questions #1-3 (p. 167)
Specht questions #1-2 (p. 171)
10/5  The Computer Fraud and Abuse Act

How a law designed to punish hacking has been applied to other forms of allegedly unauthorized online access.

Read: Grimmelman, pp. 184-89 (U.S. v. Drew)


Prepare: Grimmelman, Drew questions #1, 3, 4, 6 (p. 189)

10/12  Software Licensing and Open Source

The Internet and electronic commerce are built on software. The terms under which that software is licensed shape permissible uses as well as future development. How does “open source” software work, and what impacts does it have?

PRIVACY

10/17  The Fourth Amendment

The Stored Communications Act and the level of Constitutional privacy protection for government access to online data.

Read: Grimmelman, pp. 119-125 (U.S. v. Warshak)

Prepare: Grimmelman, U.S. v. Warshak questions #3-6 (p. 125)

10/19  Consumer Privacy

The ease of information sharing through digital media, especially with social networks, poses significant privacy questions. Where to draw the line? Does privacy still matter?

Read: Grimmelman, pp. 150-155 (JetBlue Privacy Litigation)

Prepare: Grimmelman, JetBlue questions #1, 3, 5, 6 (pp. 154-55)

10/24  MIDTERM EXAM

The exam will be administered during the regular class period. It will include short answer and essay questions covering all the topics addressed so far.
TRADEMARKS AND DOMAIN NAMES

10/26  Trademark Basics

**Trademarks protect names, logos, and distinctive elements of brands. The flexibility and global nature of the online medium creates new conflicts around trademarks.**

Read:  Grimmelman, pp. 234-42 (Trademark Basics)

Prepare:  Grimmelman, Happy Fun Ball Problem (p. 242)

10/31  Cybersquatting

**The line between maliciously registering a domain name that someone else is entitled to, and legitimate acquisition.**

Read:  Grimmelman, pp. 247-52 (PETA v. Dohney)

Prepare:  Grimmelman, questions on PETA (p. 252)

COPYRIGHT

11/2  Copyright Basics

**Exactly how copyright protection should be applied to the myriad of online content forms is hard to determine. Courts must draw lines that protect intellectual property, but do not impose excessive restrictions on others.**

Read:  Grimmelman, pp. 273-75 (Copyright)

Prepared:  Grimmelman, pp. 282-85 (Perfect 10 v. Amazon.com)

Prepare:  Music Locker Problem, Grimmelman p. 285

11/7  Software Licenses

**The Internet and electronic commerce are built on software. Use of software is subject to a license: a kind of contract that grants limited permissions to the user. Licenses potentially give websites and software distributors tremendous power.**

Read:  Grimmelman, pp. 290-95 (First Sale)

Prepare:  Grimmelman, Vernor questions #1-5 (p. 295)
11/9  Fair Use

How the exception allowing copying in limited cases is applied online.

Read: Grimmelman, pp. 304-13 (Fair Use)

INTERMEDIARY LIABILITY

11/14  Secondary Copyright Liability

Why peer-to-peer (P2P) file-sharing services such as Napster and Limewire were found liable for infringement and shut down.

Read: Grimmelman, pp. 314-24 (Secondary Liability)

Prepare: Grimmelman, Rip-Mix-Burn problem, p. 325

11/16  Safe Harbors

The online safe harbor provision of the Communications Decency Act and the Digital Millennium Copyright Act.

Read: Grimmelman, pp. 209-16 (Section 230)

Grimmelman, pp. 337-41 (Section 512)

Prepare: Grimmelman, questions on Zeran, p. 216

Grimmelman, Friday problem, pp. 341-42

11/21  Recent Developments

What are the limits of protection for online intermediaries?

Read: Grimmelman, pp. 224-31 (Fair Housing Council v. Roommates.com)


NEW GATEKEEPERS?

11/23  Private Power

How and when do private entities act like governments in restricting activities by third parties? Are companies such as Google too powerful online?

Read: Grimmelman, pp. 355-59 (Search King v. Google)

Prepare: Grimmelman, WikiLeaks Problem, pp. 359-60
11/28  Social Networks

Social networking services are a huge part of the online experience for hundreds of millions of people. Over time, Facebook and its competitors have turned themselves into platforms for a wide range of activities. What are the limits on their power?


11/30  Network Neutrality

Should government adopt rules to stop broadband providers from discriminating in favor of certain content and applications? Would network neutrality promote innovation, or throttle it? Who controls the Internet of the future?

Read: Grimmelman, pp. 375-79, 386-91 (Network Neutrality)

Prepare: Grimmelman, Network Neutrality questions, pp. 390-91

12/5  NO CLASS

Work on your final papers, which are due in class on Wednesday.

12/7  The Future

For this class, we will pick a cutting-edge topic or development and explore its legal/policy implications. Some possibilities include cloud computing, location-based mobile technologies, online video, or the evolution of social networks.

We’ll also tie up any loose ends, and you’ll have an opportunity to ask questions on material we’ve covered to help review for the final exam.