The Wharton School, University of Pennsylvania
LGST/OIDD 222: Internet Law and Policy
Spring 2016

Overview

This course looks at how courts, legislatures, and regulators confront the novel issues raised by the internet. Topics include: how territorial nations exert jurisdiction over the borderless internet; how legally-enforceable contracts are made online; intellectual property rules around digital content; liability of intermediaries such as network operators, social media services, and search engines; online privacy protections; and limitations on private power such as network neutrality rules.

Instructor

Professor Kevin Werbach
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Office Hours: Monday 12:30-2pm, or by appointment

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Materials

JAMES GRIMMELMAN, INTERNET LAW: CASES AND MATERIALS, 5TH ED. (Semaphore Press 2015)
Available for download as a PDF at http://internetcasebook.com/. A printed version can also be obtained from Amazon.com at a higher price. Note: Semaphore Press lets you choose your price. Please pay the $30 suggested price (which is a fantastic deal), if you want more faculty to publish affordable, high-quality course materials.

There is also a Coursepack available through Study.net, and I will incorporate news articles and other real-time materials as relevant to our discussions.

Learning Objectives

The goal of the course is to familiarize you with major legal and public policy debates involving the internet and digital business. At the end of the semester, you should have an understanding of:

- How the development of the internet posed (and as technology evolves, continues to pose!) new questions for governments, courts, and other legal actors.

- The major substantive areas of internet law, and how they have been addressed.

- The policy choices that legislatures and regulators make in resolving internet controversies.

The course is based on U.S. law, although we will often discuss international comparisons and controversies. You're not in law school, so there is no expectation regarding previous coursework, legal training, or career objectives. However, we will be reading court cases and other legal documents to understand the current state of the law.

Teaching Philosophy

I view teaching as a central aspect of my job as a professor. It's my responsibility to do my best to facilitate a valuable learning experience. Conversely, I expect you to take the class seriously, and to contribute actively. I welcome your feedback and questions about anything in the course. Don't hesitate to post a question on Piazza, contact me via email, drop by office hours, or schedule another time to meet.

I believe in using a variety of teaching methods, including significant amounts of active and collaborative learning. A large body of research shows that passively listening to lectures isn't the best way to promote long-term retention and learning. And why waste our three hours together in a room each week? After all, these days you can find virtually all the content from all of your classes online, without paying Penn tuition.

Finally, learning should be fun, even when it's challenging.

Requirements and Grading

Your grade will be based on the following factors:

First Exam (20%)
The midterm will be administered in class on **March 2**. It will include short answer and essay questions covering the topics addressed to that point.

Second Exam (20%)
The second exam will be administered in class on **April 25**. It will include short answer and essay questions covering the topics in the second half of the course.

Paper (25%)
The final paper is due on **May 1**. It is described in detail below.

Current Developments (15%)
Weekly online links and comments via Yellowdig, as described more fully below.

Class Participation (20%)
Your participation score will reflect your overall contribution to the class during the semester; attendance is only one factor.

Class Format and Participation

This is not a lecture course. Most class sessions will be discussion-based, although there will also be significant amounts of small-group activity. Much of the time, key points of law will be developed through interactive conversation about the cases or materials we cover. All class sessions will be recorded and available to you through Canvas, but the recordings are not a substitute for attendance and participation.

Class participation is your responsibility. Prepare for class. Raise your hand, and make comments that show engagement with the course concepts. Don't be afraid to make a mistake or take a stand. That's how learning happens.

Unless told otherwise, you are expected to read the specified material prior to each class session. It is important to do the reading, because otherwise you won't be able to follow the case discussions. If you find a legal concept confusing, don't hesitate to ask a question before or during class.

Where the reading includes a case, I will expect you to know what the decision and main issues were, so you are strongly encouraged to outline or "brief" the cases before class. (I'll explain how to do this at the outset of the semester.) The textbook often includes questions or problems after cases. If I want you to focus more closely on these for class discussion, that will be called out on the syllabus.

Students may be cold called in class. The intent is not to embarrass you, but to engage as many students as possible in the discussion. Students who speak regularly are less likely to be cold called.

Attendance

While not sufficient in itself, attendance is a key part of the class experience. We all face trade-offs in life. Although I appreciate your desire to be polite, you don't need to tell me in advance if you will miss class, or contact me afterwards about the reasons for an un-excused absence (i.e., not involving a medical issue, obligatory university/athletic trip, or family/personal emergency.)

I recognize that students will sometimes miss class for understandable reasons such as recruiting. There is no way to "make up" a class. However, if you contribute actively during the semester, missing a handful of sessions is unlikely to have a substantial negative effect on your participation grade. If you cannot attend a class, I strongly encourage you to get notes from another student and/or watch the class recording. Video recordings of all sessions will be available on Canvas.

If you believe your absence should be excused, please email me an explanation and, where possible, documentation. You do not need to use the Penn Course Absence Reporting system.

Late Submissions

Late assignments will receive a deduction of 25% for each day past the deadline. If you believe you will not be able to submit an assignment on time, please speak with me before the assignment is due. I will consider requests for extension based on the specific circumstances involved.

Policy on Devices in Class

Use of laptops, tablets, and smartphones is prohibited during class sessions, when not explicitly included in a learning activity.

I've taken this step for two reasons. First, a growing body of research shows that digital multi-tasking creates unavoidable distractions and interferes with learning. Even for note-taking, studies find that writing on paper is more effective than using a computer. Second, complaints about nearby students checking social media were among the most frequent comments on my course evaluations.

When appropriate for group work, real-time polls, and other activities, I will tell you that devices are allowed. When not expressly authorized, please keep them off. Students with relevant approved accommodations or language-related needs should contact me to discuss exceptions.

Paper Assignment

There is one required paper in this class. It is due via Canvas on **Sunday, May 1**, before midnight. The topic is as follows:

> On January 20, 2017, a new U.S. President will be inaugurated. What are the most important internet policy actions that he or she should take in the first year in office?
>
> Identify <u>one domestic initiative</u> and <u>one international initiative</u> for the new Administration. You can propose any action, including legislative changes, regulatory decisions, efforts to promote specific private solutions, or positions before international bodies. The only limitation is that it must be a new activity, or a change from current policy. Explain why the initiatives you support are such important priorities, and why your proposed solutions are the right ones.

Supporting Materials

This is a research paper. Although you should discuss relevant materials from the class, do not limit yourself to them. I expect you to find and incorporate outside sources, such as articles and white papers. However, I also expect your own analysis, not just rehash what others have written.

Format and Length

The paper should be between six and ten pages, double-spaced.

You do not need to follow a specific citation format or structure. However, be sure to include footnotes or inline references to identify outside sources you use.

Grading

Your paper will be graded based on the following criteria:

- <u>Quality of analysis</u>: The paper demonstrates thorough research and reflection. It makes a convincing argument and addresses potential objections.

- <u>Support</u>: The paper accurately applies concepts from the course. It also cites to outside research materials, and uses them effectively to buttress its arguments.

- <u>Creativity</u>: The paper is original, interesting, and presented in an engaging manner.

- <u>Organization and style</u>: The paper has a logical structure. It uses professional grammar, spelling, and punctuation.

Current Developments

A course about the internet should involve using the internet, no?

During the course, you are responsible for finding and commenting on interesting articles, videos, or blog posts about current internet-related legal or policy issues, which appeared during that week. We are using a tool called Yellowdig that allows you to "pin" items that you find on the web into the course Canvas site. Each pin must be accompanied by a comment of at least 25 words, and each comment on an existing pin must be at least 40 words long to receive credit. (The Yellowdig tab on Canvas explains the points available for each activity, under "How Points Work.")

You're also invited to tweet links and comments related to the course using the Twitter hashtag **#LGST222**. I may retweet or comment on your tweets via my account (@kwerb).

Instructor Bio

Kevin Werbach is a leading expert on the business, legal, and social implications of internet and communications technologies. In addition to his influential work on telecommunications and internet policy, he is a pioneer in the emerging field of gamification: applying digital game design techniques to business. He is the co-author of *For the Win: How Game Thinking Can Revolutionize Your Business*, which has been translated into six languages. Over 300,000 students worldwide have registered for his Coursera Massive Open Online Course (MOOC). He has received the Wharton MBA Program Teaching Innovation and Curricular Innovation Award, and was named Wharton's first-ever "Iron Prof" for his research.

Kevin co-led the review of the Federal Communications Commission (FCC) for the Obama Administration's Presidential Transition Team in 2008, and was employed as an expert advisor by both the FCC and the Department of Commerce in 2009. For nine years, he he organized the Supernova conference, described by former Xerox PARC head John Seely Brown as, "one of the must-attends of the digerati and forward thinkers of the networked age." He has consulted for numerous organizations including the World Bank, the Organization for Economic Cooperation and Development, and Microsoft.

Prior to joining the Wharton faculty, Kevin was the editor of *Release 1.0*, a renowned technology report for senior executives, and co-organizer, with Esther Dyson, of the annual PC Forum conference. Before that, he served as Counsel for New Technology Policy at the FCC during the Clinton Administration. Called "one of the few policy wonks who really got it" by Wired, he helped develop the U.S. Government's e-commerce policies, and authored *Digital Tornado*, the first comprehensive analysis of the implications of the internet on telecommunications.

Kevin has appeared in print and broadcast media including CNN, PBS NewsHour, CNBC, NPR, ABC News, *USA Today*, *The New York Times*, *The Los Angeles Times*, *The Wall Street Journal*, *The Washington Post*, *Financial Times*, and *The Economist*. His writing has appeared in *Harvard Business Review*, *Fortune*, *Wired*, *IEEE Spectrum*, *Harvard Law Review*, *Cornell Law Review*, *Berkeley Technology Law Journal, Harvard Journal of Law and Technology*, and *Slate*, among other publications, and he has testified before the U.S. Senate, House of Representatives, and FCC.

Kevin is a magna cum laude graduate of Harvard Law School, where he served as Publishing Editor of the *Harvard Law Review*, and a summa cum laude graduate of the University of California at Berkeley.

Schedule

This course covers a fast-changing set of topics. The exact contents of the syllabus may change between now and the start of the course, or even during the course if significant developments occur.

Readings unless otherwise identified are from Grimmelman, Internet Law: Cases & Materials, 5th Ed.

"Prepare" means review the questions so that, if called on in class, you could answer them. You don't need to submit anything in writing, and we may or may not cover those specific questions. Anything marked "Assignment" involves a required submission.

January 13	**Introduction** Read: pp. 9-13 (Does Internet Law Exist?)
January 20	**What is the Internet? And what is Law?** Read: pp. 27-30 (Code 2.0); 57-66 (Internet Technologies)
January 25	**Cyberspace** Read: pp. 70-86 (Cyberspace) Prepare: Voyeur Dorm questions (pp. 81-82)
January 27	**Territoriality** Read: pp. 87-94 (Gutnick); 98-102 (Overstock) Prepare: Diplomatic Mission Problem (p. 102)
February 1	**Jurisdiction** Read: pp. 118-27 (Burdick) Prepare: Burdick questions (p. 127)
February 3	**The Borderless Internet?** Read: pp. 111-15 (Digital Borders) Xi Jinping Defends China's right to 'Sovereign' Internet (Coursepack) Prepare: Digital Borders questions (p. 115)
February 8	**Speech Regulation** Read: pp. 139-43 (Bland); 158-60 (danah boyd); 170-74 (Marquan M.); 183-87 (Reno) Prepare: Reno questions (p. 187)
February 10	**The Section 230 Safe Harbor** Read: pp. 201-09 (CDA Section 230; Zeran) Prepare: Section 230 question (p. 202) Zeran questions (pp. 208-09)

February 15	**Trespass to Chattels**
	Read: pp. 372-81 (Hamidi; note on spam)
	Prepare: Hamidi questions 1-3 (p. 379)

February 17	**Filtering**
	Read: pp. 191-99 (Pappert)
	Google in China (Coursepack)
	Prepare: Pappert questions 1-2 (p. 199)
	Did Google make the right decisions about its operations in China?

February 22	**Privacy Under the Fourth Amendment**
	Read: pp. 225-27 (Intro); 240-46 (Warshak)
	Prepare: Warshak questions (pp. 246-47)

February 24	**Consumer Privacy**
	Read: pp. 324-30 (Snapchat)
	Prepare: Snapchat questions 2-5 (p. 330)
	Assignment: Find the privacy policy of a website or mobile service you use regularly (other than Facebook or Snapchat). Either print it out or bring a laptop/tablet to class. Answer the following on Canvas:
	1. What is the most interesting or surprising provision?
	2. Does it authorize anything you think should be prohibited?
	3. Do you feel better or worse about using the service now?

February 29	**Data Protection**
	Read: Examining the EU Safe Harbor Decision (Coursepack)
	Should the U.S. Adopt European-Style Data-Privacy (Coursepack)
	Right to Be Forgotten? Not That Easy (Coursepack)

March 2	**Exam #1**
	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.

March 5-13	**SPRING BREAK**

March 14	**Electronic Contracts**
	Read: pp. 341-47 (CX Digital); 348-53 (Nguyen)
	Prepare: Nguyen questions 2-3 (p. 353)

March 16	**Terms of Service**	
	Assignment: Find the user agreement or Terms of Service of a website or mobile service you use regularly. It should not be the one you used for the Privacy Policy assignment. Either print it out or bring a laptop/tablet to class. Answer the following on Canvas: 1. What is the most interesting or surprising provision? 2. Why do you think that provision was included? 3. If you were an advisor to the company, would you recommend any changes to that provision?	
March 21	**Computer Mis-Use**	
	Read:	pp. 356-57 (CFAA); 363-70 (Nosal)
		Feds Charge Activist as Hacker (Coursepack)
	Prepare:	Nosal questions 1,3 (p. 370)
March 23	**Trademarks**	
	Read:	pp. 383-84 (Intro); 393-402 (Tiffany; Brookfield)
	Prepare:	Tiffany questions 1-4 (p. 399)
		Happy Fun Ball Problem (pp. 402-03)
March 28	**Cybersquatting**	
	Read:	pp. 405-17 (ACPA; Doughney; Taubman); 422 (UDRP §§4a-b)
	Prepare:	ACPA questions 1,4 (p. 407)
		Doughney questions 1,2 (p. 412)
		Taubman questions 1,3 (p. 5417)
March 30	**Internet Governance**	
	Read:	pp. 418-21 (ICANN)
		No Joke (Coursepack)
		NTIA Announces Intent to Transition Key Functions (Coursepack)
April 4	**Copyright**	
	Read:	pp. 467-76 (Intro; ReDigi); 484-89 (Licenses; Field)
	Prepare:	ReDigi questions (p. 476)
April 6	**Fair Use**	
	Read:	pp. 505-10 (Fair Use; Napster); 477-78, 511-13 (Perfect10)
	Prepare:	Perfect10 questions (pp. 513-14)
April 11	**Secondary Liability**	
	Read:	pp. 520-29 (Napster; Grokster)
	Prepare:	Napster questions (p. 524)
		Grokster questions 1,2,4,5 (p. 529)

April 13	**Notice and Takedown, DRM, and Anti-Circumvention**
	Read: pp. 530-33 (Section 512 through [f]); 536-39 (Lenz); 552-55 (DRM) Appeals Court Strikes a Blow for Fair Use (Coursepack)
	Prepare: Friday Problem (p. 536)
	Lenz questions (p. 539)
April 18	**Network Neutrality**
	Read: pp. 618-22; 625-38
	Prepare: Net Neutrality questions, pp. 622-23
	Broadband Internet Regulation questions 1-3,5 (p. 638)
April 20	**Common Carriage and Beyond**
	Read: pp. 643-56
	Prepare: Open Internet questions 1-3 (pp. 651-52)
	Pai dissent questions 1-3 (p. 656)
April 25	**Exam #2** The exam will be administered during the regular class period. It will include short answer and essay questions covering the topics addressed in the second half of the course.
April 27	**Emerging Issues** This final session will review the course and address a cutting-edge area of internet law. Depending on student interest and developments during the semester, these might include Bitcoin and the Blockchain, regulation by and of algorithms, the on-demand economy, cloud computing, big data... or something I can't even predict yet!