The Wharton School, University of Pennsylvania
LGST/OIDD 222: Internet Law and Policy
Fall 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
Department of Legal Studies and Business Ethics, 673 Huntsman Hall
(215) 898-1222
werbach@wharton.upenn.edu   (best way to reach me)

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

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 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. I will spend time early in the course going over how to understand these materials.

Teaching Philosophy

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. Don't hesitate to 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? You can find virtually all the content from all of your classes online, without paying Penn tuition. The most valuable learning emerges from live interaction with me and with your fellow students.

Requirements and Grading

Your grade will be based on the following factors:

First Exam (20%)
The midterm will be administered in class on **October 17**. 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 **December 7**. It will include short answer and essay questions covering the topics in the second half of the course.

Paper (35%)
The final paper is described in detail below.

Individual Assignments (5%)
There are three short assignments to be completed in advance of in-class activities. They are listed in the syllabus.

Class Participation (20%)
Your participation score will reflect your overall contribution to the class during the semester.

Late assignments will receive a deduction of 25% for each day. (A new "day" begins 30 minutes after the official 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.

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 through Canvas, but the recordings are not a substitute for 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 and Classroom Expectations

Please arrive on time and display a name tent each day. I want to get to know you individually and give you credit for your contributions. I'll do my best to learn your names early in the course, but the name tents help me keep track.

While not sufficient in itself, attendance is a key part of the course experience. Often the essential points of law are not self-evident from the readings; they will emerge from our discussions in class. And you can't get credit for participation if you aren't there.

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 to explain an un-excused absence (i.e., not involving a medical issue, obligatory university/athletic trip, or family/personal emergency.) 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.

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 materially negative effect on your participation grade. If you cannot attend a class, I encourage you to get notes from another student and/or watch the class recording. Video recordings of all sessions will be available on Canvas.

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, and students who use digital devices in class perform worse on exams. 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, December 18**, before midnight. The topic is as follows:

> As a leading expert in internet law, you are asked for advice by the incoming U.S. Presidential Administration. There are many exciting technological developments today such as the Big Data Analytics, the Blockchain, the Internet of Things, and the Sharing Economy. In thinking about how to approach them, the Administration wants to make sure it learns from experience. They have asked you to identify the three most important lessons to be drawn from the history of internet law so far.

> Your three lessons may include successful approaches, mistakes to avoid, perspectives on where new legislation is needed, and general conclusions about how the law has evolved. You are expected to illustrate your points with specific examples from the course. Be sure to explain why the lessons you identify are worth following. In particular, what are the most important public policy goals (e.g. innovation, competition, promoting investment, and protection of rights) and how should they be weighed in choosing the right approaches?

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, not counting a cover page or bibliography.

You do not need to follow a specific format. However, any source you quote or rely on, whether from the course readings or outside materials, should have a reference. This may take the form of a footnote, or an in-line parenthetical (e.g. Pasquale, 2015) with a bibliography at the end. Every statement based on a source should reference that source.

Grading

Your paper will be graded based on the following criteria:

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

- Course support: The paper illustrates its points with concepts or examples covered in the course, and does so accurately.

- <u>Research</u>: The paper 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 encouraged to find and comment 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. You earn points (up to a maximum of 250 for the semester) if a pin is accompanied by a comment of sufficient length. These points do not directly contribute to your grade, but I will consider them in determining your class participation score. The Yellowdig tab on Canvas explains the points available for each activity, under "How Points Work."

You are not required to contribute to Yellowdig, but if you do, it will be considered part of your class participation. In particular, students who are uncomfortable speaking up in class may find this opportunity to contribute in another format helpful. Participating in the Yellowdig discussions will also help you understand the issues in the course, and give you examples to incorporate into your paper.

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 an expert on the business, legal, and social implications of internet and communications technologies. He has published numerous academic and popular works on internet policy, telecommunications regulation, and legal aspects of emerging technologies. He is a pioneer in the emerging field of gamification, and 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".

Professor Werbach co-led the review of the Federal Communications Commission (FCC) for the Obama Administration's Presidential Transition Team in 2008. Prior to joining the Wharton faculty, he 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. Werbach is a magna cum laude graduate of Harvard Law School, where he was Publishing Editor of the Law Review, and graduated summa cum laude from 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, <u>Internet Law: Cases & Materials, 6th Ed</u>. *Please note: the sixth edition was just released in August 2016.*

Many of the readings include court cases. In general, the specific parties and facts are less important than the point of law the case stands for. Try to focus on *why* the court reached the decision it did. (This is where the facts may be relevant, if they define the scope of the court's decision.) See if you can generalize the rule the decision stands for in one sentence. Then consider how it would apply to other controversies involving similar, but not identical, facts.

"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.

August 31	**Introduction**
	Read: pp. 9-13 (Does Internet Law Exist?)
September 7	**What is the Internet? And what is Law?**
	Read: pp. 27-35 (Internet Technologies); 40-49 (Code 2.0, Zittrain)
September 12	**Cyberspace**
	Read: pp. 51-67 (Cyberspace) Prepare: Voyeur Dorm questions (p. 67)
September 14	**Territoriality**
	Read: pp. 68-75 (Gutnick); 80-83 (Overstock), 93-96 (Borders) Prepare: Diplomatic Mission Problem (p. 83) Digital Borders questions (p. 96-97)
September 19	**Jurisdiction**
	Read: pp. 101-09 (Burdick) Prepare: Burdick questions 1-3 (p. 109)
September 21	**Speech Regulation**
	Read: pp. 121-24 (Bland); 140-42 (danah boyd); 153-58 (Marquan); 163-70 (Reno) Prepare: Reno questions (p. 170)

September 26	**The Section 230 Safe Harbor**
	Read: pp. 185-202 (CDA Section 230; Zeran; Jones)
	Prepare: Section 230 question (p. 186)
	Zeran questions (p. 192)
	Jones questions 1-2 (p. 202)
September 28	**Filtering**
	Read: pp. 174-82 (Pappert)
	Google in China (Coursepack)
	Prepare: Pappert questions 1-2 (p. 182)
	Did Google make the right decisions about its activity in China?
October 3	**Privacy Under the Fourth Amendment**
	Read: pp. 211-34 (Intro; Riley; Warshak)
	Prepare: Riley questions (p. 226)
	Warshak questions (pp. 233-34)
October 5	**Consumer Privacy**
	Read: pp. 311-17 (Snapchat)
	Prepare: Snapchat questions 2-5 (p. 317)
	Assignment: Find the privacy policy of a website or mobile service you use regularly (other than Facebook or Snapchat). Print it out. Answer the following on Canvas, in 250-500 words total: 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?
October 10	**Data Protection**
	Read: Examining the EU Safe Harbor Decision (Coursepack)
	Should the US Adopt European-Style Data-Privacy (Coursepack)
	The Triumph of Privacy Shield (Coursepack)
	Right to Be Forgotten? Not That Easy (Coursepack)
October 12	**NO CLASS – Yom Kippur**
October 17	**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.
October 19	**Electronic Contracts**
	Read: pp. 337-49 (CX Digital; Nguyen)
	Prepare: CV Digital questions 1-4 (pp. 343-44)
	Nguyen questions 2-3 (p. 349)

October 24	**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. Print it out. Answer the following on Canvas, in 250-500 words total: 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?
October 26	**Computer Mis-Use**

	Read: pp. 352-53 (CFAA); 356-65 (Nosal)
	           Use Someone's Password? Go to Jail, says 9th Cir. (Coursepack)
	           Feds Charge Activist as Hacker (Coursepack)
	Prepare: Nosal questions 1-3 (p. 370)

October 31	**Trespass to Chattels**
	Read: pp. 366-75 (Hamidi; note on spam) Prepare: Hamidi questions 1-3 (p. 373)
November 2	**Trademarks**
	Read: pp. 377-78 (Intro); 387-396 (Tiffany; Brookfield) Prepare: Tiffany questions 1-4 (p. 393) Happy Fun Ball Problem (pp. 396-97)
November 7	**Cybersquatting**

	Read: pp. 398-411 (Toeppen; ACPA; Doughney; Taubman);
	Prepare: ACPA questions 1,4 (p. 401)
	           Doughney questions 1,2 (p. 406)
	           Taubman questions 1,3 (p. 411)

November 9	**Internet Governance**

	Read: pp. 412-18 (ICANN; UDRP)
	           No Joke (Coursepack)
	           Testimony of Assistant Secretary Strickling (Coursepack)
	Assignment: Answer the following in Canvas, in 250-500 words total:
	     1. Is the U.S. making the right decision in transitioning the management of the root server to ICANN?
	     2. What are the most important safeguards to incorporate?

November 14	**Copyright**
	Read: pp. 429-43(Intro; ReDigi; Perfect10); 446-51 (Licenses; Field)
	Prepare: ReDigi questions (p. 439)
November 16	**Fair Use**
	Read: pp. 467-73 (Fair Use; Napster); 477-79 (Perfect10)
	Prepare: Perfect10 questions (pp. 479-80)
November 21	**Secondary Liability**
	Read: pp. 485-95 (Sony Note; Napster; Grokster)
	Prepare: Napster questions (p. 490)
	Grokster questions 1,2,4,5 (p. 495)
November 23	**No Class – Pre-Thanksgiving**
November 28	**Notice and Takedown, DRM, and Anti-Circumvention**
	Read: pp. 497-99 (Section 512 to [f]); 502-07 (Lenz); 520-23 (DRM) Appeals Court Strikes a Blow for Fair Use (Coursepack)
	Prepare: Friday Problem (p. 502)
	Lenz questions (p. 507)
November 30	**Network Neutrality**
	Read: pp. 587-606
	Prepare: Net Neutrality questions, p. 591
	Broadband Internet Regulation questions 1-3,5 (pp. 606-07)
December 5	**Common Carriage and Beyond**
	Read: pp. 611-19 (Open Internet Order); 620-24 (Pai Dissent)
	Prepare: Open Internet questions 1-3 (pp. 619-20)
	Pai dissent questions 1-3 (pp. 624-25)
	US Telecom v. FCC opinion (Coursepack)
December 7	**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.
December 12	**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!