

Internet Law, Privacy, and Cybersecurity

Professor Leeza Garber, Esq.

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The Wharton School, University of Pennsylvania

Internet Law, Privacy, and Cybersecurity (Fall 2024)

Overview

This course examines the complex and often novel legal issues surrounding the development and current state of the Internet, information privacy, and cybersecurity. Topics include federal- and state-level regulation and enforcement of Internet and privacy legal concepts, data breaches, online privacy protections, how to legally manage a borderless Internet, and the liability of intermediaries such as network operators, social media services, and search engines.

Instructor

Leeza Garber, Esq.

Leeza Garber is an expert on the legal developments in the fields of cybersecurity and privacy. She is an attorney and consultant, and has published works on cybersecurity in healthcare, net neutrality, cybersecurity threat sharing, digital forensic investigations, and diversity in the field of cybersecurity. Leeza speaks at conferences and seminars across the United States, including ISACA, the National Initiative for Cybersecurity Education, the American Bar Association, the Pennsylvania Bar Institute, the International Legal Technology Association, and the Association of Corporate Counsel. She appears regularly as an analyst for national televised news to analyze issues relating to the intersection of law, technology, and information privacy, including big data, social media, data breaches, hackers, and privacy legislation. Her book on cybersecurity hiring best practices, *Can. Trust. Will.: Hiring for the Human Element in the New Age of Cybersecurity* (Business Expert Press) was published in January 2022. She has been honored with the Wharton Teaching Excellence awards for the 2020 and 2021 academic years.

Leeza is a graduate of the University of Pennsylvania Law School, received a certification in Business and Public Policy from The Wharton School, and is a *cum laude* graduate of Bryn Mawr College.

Materials

James Grimmelman, *Internet Law: Cases and Materials*, 12th Ed. (Semaphore Press 2022)

Available for download as a PDF at <http://internetcasebook.com/> (A printed version can also be obtained from Amazon 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.

Daniel J. Solove & Paul M. Schwartz, Privacy Law Fundamentals 2022 (IAPP)

Learning Objectives

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

- How the development of the Internet 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;
- How information privacy law has been impacted by the rise of new technologies; and
- How the concept of cybersecurity interacts with the moving target of Internet and privacy law.

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

We are in this together. I will do my best to facilitate a valuable learning experience, and 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, or schedule a time for a phone call or meeting. This class will include active and collaboration learning. I've found that passively listening to a lecture is not the best way to learn - let's interact, discuss, and make the most of our time in the classroom. Additionally, this course exemplifies an actively changing field: reading assignments may change to reflect current news.

Requirements and Grading

Your grade will be based on the following factors:

Mid-Term Exam (30%): The midterm will include short answer and essay questions covering the topics addressed to that point.

Final Paper (40%): The final paper is described below.

Class Participation (30%): 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 small-group activities. Much of the time, key points of law will be developed through interactive conversation about the cases or materials we cover. Class participation is your responsibility, it counts towards your grade and will help you retain the information, so: prepare. Read the required materials before class, take notes, raise your hand, ask questions, and offer comments that show engagement with the course concepts. Students may be cold-called in class, simply to engage as many of you as possible in the discussion. The more you participate proactively, the less likely you are to be cold-called.

The Grimmelman text includes questions after most sections. If I want you to prepare answers to these, I will call it out in the syllabus. Additionally, both the Grimmelman and Solove texts reference legal cases that we will discuss. It is important to outline or “brief” these cases in advance of class - here is the basic idea:

- (a) Facts (background, case name, parties)
- (b) Issues (what is in dispute)
- (c) Holding (the applied rule of law)
- (d) Rationale (reasons for the holding)

Attendance and Classroom Expectations

I want to get to know you! Please arrive on time and display your name tent each day. Attendance is a key part of this course experience (for learning and for your grade). You do not need to email me to explain unexcused absences (i.e., those not involving a medical issue, obligatory university/athletic trip, or family/personal emergency). If you think 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 understand that you will sometimes miss class for understandable reasons, like recruiting. There is no way to “make up” a class. However, if you contribute actively during the semester, missing one session is unlikely to have a materially negative effect on your participation grade. Remember, this class only meets once per week.

Policy on Devices in Class

Use of laptops, tablets, and smartphones is prohibited during class sessions, when not explicitly included in a learning activity. 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 turned off and away from your desk. 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, your final assignment. It will be a research paper, requiring you to discuss relevant materials from the class, and finding and incorporating outside sources, such as articles and white papers. You will be expected to develop an argument surrounding a thoughtful thesis. The prompt will be distributed during week nine of class. The paper should be between eight 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.

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.
- Research: The paper cites outside research materials, and uses them effectively to buttress its arguments.
- Creativity: The paper is original, interesting, and presented in an engaging manner.
- Organization and style: The paper has a logical structure. It uses professional grammar, spelling, and punctuation.

Current Developments & Schedule

This is a course centered around the Internet - so use it! Our syllabus is open to change depending on the latest developments (and there will likely be many). Use the Internet as the rich resource it can be: find related articles, new updates, and challenging ideas to enhance your experience in the class.

August 27 **Defining Internet Law (Week 1)**

Topics: Cyberspace, Jurisdiction, Territoriality

Complete the Below Prior to Class on 8/27

Assignment

1. Grimmelman, pp. 57-91, 94-117 [Prepare Questions on “Digital Borders”, “Equustek” (before “Seahaven Problem”)]

September 3

Defining Cybersecurity (Week 2)

Topics: Data Breaches, Data Security

Complete the Below Prior to Class on 9/3

Assignment

1. Solove, pp. 197-98, 203-14
2. ITIF, "Looming Cost of a Patchwork of State Privacy Laws"
<https://itif.org/publications/2022/01/24/looming-cost-patchwork-state-privacy-laws/>
3. NIST, "Framework for Improving Critical Infrastructure Cybersecurity"
<https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf>
4. Wired, "Equifax's Security Overhaul, a Year After Its Epic Breach"
<https://www.wired.com/story/equifax-security-overhaul-year-after-breach/>
5. Foley & Lardner, "Supreme Court Will Not Look at *Spokeo* Again"
<https://www.foley.com/en/insights/publications/2018/02/supreme-court-will-not-look-at-spokeo-again-leavin>
6. Troutman Pepper, "Spokeo Update"
<https://www.consumerfinancialserviceslawmonitor.com/2019/03/spokeo-update-parties-settle-long-running-fcra-dispute/>

September 10

Speech on the Internet (Week 3)

Topics: First Amendment, Hate Speech, Responsibility

Complete the Below Prior to Class on 9/10

Assignment

1. Solove, p. 28
2. Grimmelman, pp. 123-24, 128-33, 140-42, 144-46, 171-79 (read through *Zeran* case) [Prepare Question sets after *Bland*, after *Violent Speech*, after *Zeran*]
3. Harvard Law Review, "The New Governors"
https://harvardlawreview.org/wp-content/uploads/2018/04/1598-1670_Online.pdf (pp. 1603-1615)

<https://www.nytimes.com/2018/04/04/us/politics/cambridge-analytica-scandal-fallout.html>

3. Wired, "Should Big Tech Own Our Personal Data?"
<https://www.wired.com/story/should-big-tech-own-our-personal-data/>
4. NY Times, "How Should We Limit Facebook's Power?"
<https://www.nytimes.com/2021/10/08/podcasts/facebook-regulation.html>
5. FTC, "Facebook Settles FTC Charges That It Deceived Consumers By Failing to Keep Privacy Promises"
<https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep>

October 8

Social Media, Continued (Week 7)

Topics: Regulating Social Media, Data as Currency, Cambridge Analytica

October 15

Anonymity (Week 8) Topics: Dark Net, Tor

Complete the Below Prior to Class on 10/15

Assignment

1. Grimmelman, Chapter 4 Sec C
2. Wired, "Silkroad: The Untold Story"
<https://www.wired.com/2015/05/silk-road-untold-story/>
3. The Hill, "Lawmakers Voice Skepticism Over Facebook's Deepfake Ban"
<https://thehill.com/policy/technology/477358-lawmakers-voice-skepticism-over-facebooks-deepfake-ban>
4. Wired, "Facebook's Deepfake Ban is a Solution to a Distant Problem"
<https://www.wired.com/story/facebook-deepfake-ban-disinformation/>
5. Tor, "About: History"
<https://www.torproject.org/about/history/>

October 22

Artificial Intelligence (Week 9)

Topics: Generative AI, Deepfakes

Complete the Below Prior to Class on 10/22

Assignment

1. Pause Giant AI Experiments <https://futureoflife.org/open-letter/pause-giant-ai-experiments/>
2. Artificial Intelligence Act <https://www.europarl.europa.eu/news/en/press-room/20240308IPR19015/artificial-intelligence-act-meps-adopt-landmark-law>
3. Law 360, High Stakes AI Legal Battles <https://www.law360.com/articles/1774888/these-are-the-high-stakes-ai-legal-battles-to-watch-in-2024>
4. The Hill, "Lawmakers Voice Skepticism Over Facebook's Deepfake Ban" <https://thehill.com/policy/technology/477358-lawmakers-voice-skepticism-over-facebooks-deepfake-ban>
5. Wired, "Facebook's Deepfake Ban is a Solution to a Distant Problem" <https://www.wired.com/story/facebook-deepfake-ban-disinformation/>

October 29

Trademark, Copyright & Patent...on the Internet (Week 10)

Topics: Domain Names, Fair Use, Digital Rights

This is a very complex week of readings - the class will be split into three parts, each assigned one aspect of the week's assignments, and will present to each other.

Complete the Below Prior to Class on 10/15

Assignment

A-H: Trademark

- Grimmelman Chapter 6 thru p390 (be prepared to explain what a Trademark is, how it applies to Internet Law concepts)
- Grimmelman pp382-383: questions 1-5 (be prepared to explain Tiffany case as background)
- explain the concept of "rush to trademark" within the Metaverse

I-R: Copyright

- Grimmelman Chapter 7 - pp401-411, thru Oracle case - be prepared to explain what a Copyright is, and to explain the basics of Oracle case)
- Grimmelman pp421-429, question #1 p429
- Grimmelman pp436, 439-443 (Field v Google case), p442-43 questions #1 and #5

S-Z: Copyright & Patent

- Grimmelman Chapter 7 - p401, pp491-497 (be prepared to explain what Sec 512 is); Friday problem questions #1 and #2
- Grimmelman Chapter 8 - p531, pp537-541 (Newegg case), questions p541 (be prepared to explain what a Patent is, and the basics of the Newegg case)

You will have 15 minutes at the beginning of class to get together with your group and divide up responsibility of explaining cases, concepts, and answering questions. Everyone should have participated by the end of class.

November 5

Trademark, Copyright & Patent... - CONTINUED (Week 11)

November 12

Fourth & Fifth Amendments (Week 12)

Topics: Government Access, Surveillance, Searches & Seizures

Complete the Below Prior to Class on 11/12

Assignment

1. Solove, pp. 38-40
2. Grimmelman, pp. 195-243 [Prepare Questions pp. 210, 216 (1&2), 224 (1)]

3. Bloomberg Law, "Google, Meta, Apple Push Overhaul of How Spy Agencies Track Tech" <https://news.bloomberglaw.com/tech-and-telecom-law/trump-vitriol-over-us-spying-may-help-big-tech-win-curbs-on-law>

November 19 **Internet-Connected Everything (Week 13)**

Topics: Internet of Things, Big Data

Complete the Below Prior to Class on 11/19

Assignment

1. NIST "Cybersecuring the Internet of Things" <https://www.nist.gov/blogs/taking-measure/cybersecuring-internet-things>
2. TechCrunch "Judge Orders Amazon to Turn Over Echo Recordings in Double Murder Case" <https://techcrunch.com/2018/11/14/amazon-echo-recordings-judge-murder-case/>
3. Healthcare IT News "Hospitals Still Don't Have a Handle on Their IoT Devices" <https://www.healthcareitnews.com/news/hospitals-still-dont-have-handle-their-iot-devices>
4. Forbes, "Top 4 IoT Trends in 2023" <https://www.forbes.com/sites/bernardmarr/2022/11/07/the-top-4-internet-of-things-trends-in-2023/?sh=46c12e0b2aea>

December 3

Unique Digitize Identifiers (Week 14)

Topics: Biometric Data, Genetic Databases

Complete the Below Prior to Class on 12/3

Assignment

1. Solove, pp. bottom 245
2. JD Supra, "Google Sued Under Illinois BIPA" <https://www.jdsupra.com/legalnews/google-sued-under-illinois-biometric-79238/>
3. Harvard Law, "Illinois Supreme Court Interprets Illinois Biometric Privacy Act" <https://jolt.law.harvard.edu/digest/rosenbach-v-six-flags-illinois-supreme-court-interprets-illinois-biometric-privacy-law>
4. Time, "A Major Drug Company Now Has Access to 23 and Me's Genetic Data. Should You Be Concerned?" <https://time.com/5349896/23andme-glaxo-smith-kline/>
5. Illinois General Assembly, Biometric Information Privacy Act" <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3004&ChapterID=57>
6. AP News, "Judge Approves \$650M Facebook Privacy Lawsuit Settlement" <https://apnews.com/article/technology-business-san-francisco-chicago-lawsuits-af6b42212e43be1b63b5c290eb5bfd85>
7. FTC, "FTC Recommends Best Practices for Companies That Use Facial Recognition Technologies" <https://www.ftc.gov/news-events/press-releases/2012/10/ftc-recommends-best-practices-companies-use-facial-recognition>