

## Internet Law - Fall 2020

Professor Hannah Bloch-Wehba

Texas A&M University School of Law

3 credit hours

### About the readings

A note on the readings: We'll encounter a wide range of legal documents, including not just judicial opinions but also domestic and foreign statutes, administrative rulings, briefs, and policy proposals. We will also be reading book excerpts, as well as legal and social science scholarship. There is a massive body of legal, social, political, and economic research concerning the Internet, and Internet Law is always interdisciplinary to some extent. Perspectives from non-lawyers frequently also influence debates within Internet law itself.

### Required materials

1. James Grimmelman, *Internet Cases & Problems* (10th ed. 2020) ("GIL")
2. All other readings will be found on Canvas or at the links provided.

### Optional readings

On certain class days, I have supplied optional readings or resources. These are truly optional, but they provide some perspective, background, or interpretation that I find interesting or helpful.

## Class 1 - August 18, 2020

### Introduction: The Concept of Internet Law

#### Assignments

- submit initial survey and video introduction by 5 p.m. on Sunday, 8/16
- sign up for a memo week

#### Readings

- Ethan Zuckerman & Andrew McLaughlin, [Introduction to Internet Architecture and Institutions](#)
- John Perry Barlow, A Declaration of the Independence of Cyberspace (GIL 56)
- Lawrence Lessig, *Code v.2.0*, Chapter 7 (Canvas)
- Julie E. Cohen, *Law for the Platform Economy*, 51 U.C. Davis L. Rev. 133, 191–199 (2017) (Canvas)
- Safiya Noble, *Missed Connections: What Search Engines Say About Women* (Canvas)

**Optional** - Jessie Daniels, *Race and Racism in Internet Studies: A Review and Critique*, new media & society 15(5), 695-99, 704-707 (Canvas) - Julian Dibbell, *A Rape in Cyberspace* -

Jennifer L. Mnookin, *Virtual(Ly) Law: The Emergence of Law in LambdaMOO*, 2 Journal of Computer-Mediated Communication (1996). - Frank Easterbrook, *The Law of the Horse* (GIL 11) - Lawrence Lessig, *What Cyberlaw Might Teach* (503-513) (Canvas)

## Class 2 - August 20, 2020

### Geography, Jurisdiction and Sovereignty

#### Readings

- David R. Johnson & David Post, *Law & Borders* (GIL 60-63)
- Jack Goldsmith & Tim Wu, *Digital Borders* (GIL 77-81)
- *Dow Jones & Co. v. Gutnick* (GIL 73-77)
- *Clemens v. McNamee*, 615 F.3d 374 (5th Cir. 2010) (Canvas)
- *Ayyadurai v. Floor64, Inc.* (GIL 103-106)
- *Equustek I, II, & III* (GIL 81-89)

## Class 3 - August 25, 2020

### The First Amendment & Platforms as Forums

#### Readings

- Materials on the Commerce Clause, Preemption and the Dormant Commerce Clause (all of GIL 2.C.3)
- *Marsh v. Alabama*
- *PruneYard Center v. Robins*
- *Manhattan Community Access Corp v. Halleck*
- *Packingham, Knight Institute v. Trump* & notes (GIL 122-126)
- *Cyber Promotions & Zhang v. Baidu* (GIL 594-599)
- *Prager University v. Google* (9th Cir. 2020)

**Optional** - The 1% Visit El Barrio

## Class 4 - August 27, 2020

### Harmful Speech I

#### Readings

- *Whitney v. California* (Brandeis, J., concurring)
- *Brandenburg v. Ohio*
- Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. Rev. 61, 61-81 (2009) (Canvas)
- Facebook Hard Questions Blog, *Who Should Decide What is Hate Speech in an Online Global Community?*
- *United States v. Yassin* (W.D. Mo. 2017) (Canvas)
- Ángel Díaz, *Global Internet Forum to Counter Terrorism's 'Transparency Report' Raises More Questions Than Answers* (Sept. 25, 2019)

## Class 5 - September 1, 2020

### Harmful Speech II

#### Readings

- Ex Parte Thompson (Canvas)
- State v. Austin (GIL 187-196)
- Danielle Keats Citron, *Sexual Privacy*, 128 Yale L.J. 1870, 1904-1929 (2019) (Canvas)
- Amanda Levendowski, *Our Best Weapon Against Revenge Porn: Copyright Law?*, The Atlantic (Feb. 4, 2014)

## Class 6 - September 3, 2020

### Intermediary Liability and Immunity: Section 230

#### Readings

- Section 230 (GIL 197)
- Zeran v. AOL (GIL 198-205)
- Herrick v. Grindr (Canvas)
- Hassell v. Bird (Canvas)
- [The Santa Clara Principles](#)
- Jack M. Balkin, *Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation*, 51 U.C.D. L. Rev. 1149, 1172-79 (2017) (Canvas)

## Class 7 - September 8, 2020

### Intermediary Immunity Revisited

#### Readings

- [Executive Order on Preventing Online Censorship](#)
- NTIA Petition for Rulemaking to Clarify Provisions of Section 230 of the Communications Act (Canvas)
- Glawischnig-Piesczek v. Facebook (Canvas)
- NetzDG (Canvas)
- Complaint, *Airbnb v. Schneiderman* (Canvas)
- Daphne Keller, [Build Your Own Intermediary Liability Law](#)
- Danielle Citron and Benjamin Wittes, *The Internet Will Not Break*, pp. 411-423 (Canvas)
- Jamila Jefferson-Jones, *Shut Out of Airbnb* (Canvas)

## Class 8 - September 10, 2020

### Net Neutrality

#### Readings

- *Miami Herald v. Tornillo* (Canvas)
- *Red Lion v. FCC* (Canvas)
- *Turner Broadcasting v. FCC* (Canvas)
- Materials on Net Neutrality (GIL 648-670)
- *USTA v. FCC* (Kavanaugh, J., dissenting from rehearing en banc) (Canvas)
- Jack Balkin, *Free Speech is a Triangle* (2037-47) (Canvas)
- Free Press, *The Racial Digital Divide Persists*

#### Optional

- *Net Neutrality: Last Week Tonight with John Oliver* (HBO)
- Annemarie Bridy, *Remediating Social Media: A Layer-Conscious Approach*, pp. 194-213 (Canvas)

## Class 9 - September 15, 2020

### Elections, disinformation, and political ads

#### Readings

- *Washington Post v. McManus* (4th Cir. ) (Canvas)
- Honest ADS Act (Canvas)
- Daniel Kreiss & Shannon C. Mcgregor, *The "Arbiters of What Our Voters See": Facebook and Google's Struggle with Policy, Process, and Enforcement around Political Advertising*, Political Communication (2019) (Canvas)
- Deen Freelon et al., *Black Trolls Matter: Racial and Ideological Asymmetries in Social Media Disinformation* (Canvas)
- Scott Shane & Vindu Goel, *Fake Russian Facebook Accounts Bought \$100,000 in Political Ads*, N.Y. Times (Sept. 6, 2017)
- Niam Yaraghi, *Twitter's ban on political advertisements hurts our democracy*, Brookings (Jan. 8, 2020)

#### Optional:

- The Great Hack (Netflix)
- Fresh Air, Christopher Wylie

## Class 10 - September 17, 2020

### Cryptography and Anonymity

#### Readings

- *United States v. O'Brien* (Canvas)

- Note on Cryptography (GIL 39-44)
- Bland v. Roberts (GIL 135-137)
- Bernstein v. U.S. Department of Justice (GIL 138-143)
- Michael H. Keller & Gabriel J.X. Dance, *The Internet Is Overrun With Images of Child Sexual Abuse. What Went Wrong?*, N.Y. Times (Sept. 28, 2019)
- ABA Formal Opinion 477 (Canvas)
- Doe v. Individuals, Whose True Names Are Unknown (GIL 271-276)
- Amelia Nierenberg, *Signal Downloads Are Way Up Since the Protests Began*, N.Y. Times (June 11, 2020)

## Class 11 - September 22, 2020

### Computer Fraud & Abuse Act

#### Readings

- Computer Misuse Statutes (GIL 358-360)
- *United States v. Swartz*, Indictment (Canvas)
- *HiQ v. LinkedIn* (GIL 371-377)
- *Sandvig v. Sessions* (Canvas)
- *CDK Global LLC v. Brnovich* (Canvas)

## Class 12 - September 24, 2020

### Law Enforcement & Government Surveillance I

#### Readings

- Fourth & Fifth Amendments (GIL 221)
- Stored Communications Act (Canvas)
- *Riley v. California*, *United States v. Spencer* (GIL 225-236)
- *Alasaad v. Nielsen* (Canvas)
- *Warshak & Carpenter* (GIL 237-250)
- *United States v. Chatrie*, Motion to Suppress (Canvas)

#### Optional

- Joseph Cox, *How to Protest Without Sacrificing Your Digital Privacy* (Jun. 1, 2020)

## Class 13 - September 29, 2020

### Law Enforcement & Government Surveillance II

#### Readings

- *Blanchard v. Memphis* (Canvas)
- Affidavit in Support of the Complaint in the matter of Lore Elisabeth Blumenthal (Canvas)

- [Police Used Smart Streetlight Footage to Investigate Protesters](#), Voice of San Diego (Jun. 29, 2020).
- Sam Biddle, [Police Surveilled George Floyd Protests With Help From Twitter-Affiliated Startup Dataminr](#), The Intercept (Jul. 9, 2020).
- Kashmir Hill, [The Secretive Company That Might End Privacy as We Know It](#), N.Y. Times (Jan. 18, 2020).
- Desmond Upton Patton et al., *Stop and Frisk Online: Theorizing Everyday Racism in Digital Policing in the Use of Social Media for Identification of Criminal Conduct and Associations* (Canvas)

## Class 14 - October 1, 2020

### Privacy

#### Readings

- Gawker Media v. Bollea (GIL 158-164)
- Jones v. Dirty World (GIL 205-215)
- D.K.W. v. Source for PublicData.com, LP, 526 S.W.3d 619 (Tex. App.–Dallas 2017, pet. denied (Canvas)
- Keri Blakinger, [Newsrooms Rethink a Crime Reporting Staple: The Mugshot](#), The Marshall Project (Feb. 11, 2020).
- Sarah Esther Lageson, [Online Criminal Records Trap Americans in a Purgatory of Digital Punishment](#), Slate Magazine (Jun. 24, 2020).

## Class 15 - October 6, 2020

### Consumer Privacy

#### Readings

- Alessandro Acquisti, Laura Brandimarte & George Loewenstein, *Privacy and Human Behavior in the Age of Information*, 347 Science 509 (2015) (Canvas)
- Amazon privacy notice (Canvas)
- In re Google Assistant Privacy Litigation (Canvas)
- Eichenberger v. ESPN (GIL 292-296)
- ACA Connects v. Frey (Canvas)

## Class 16 - October 8, 2020

### The FTC's Privacy and Security Regulation

#### Readings

- Daniel J. Solove & Woodrow Hartzog, *The FTC and the New Common Law of Privacy*, 114 Colum. L. Rev. 583 (2014) (Canvas)
- Accusearch (Canvas)
- Wyndham (Canvas)

- United States v. Facebook, Complaint (Canvas)
- In re Snapchat (GIL 304-310)

## **Class 17 - October 13, 2020**

### **The GDPR and the CCPA**

#### *Readings*

- GDPR materials (319-332)
- Google v. CNIL (Canvas)
- Chander, Kaminski & McGeeveran, *Catalyzing Privacy Law* (Canvas)
- California Consumer Privacy Act (GIL 310-317)
- *Schrems* (Canvas)

## **Class 18 - October 15, 2020**

### **Trademark and Copyright**

#### *Readings*

- Tiffany v. eBay (GIL 389-395)
- A&M Records v. Napster (GIL 485-490)
- MGM v. Grokster (GIL 490-494)
- Section 512 (GIL 494-500)
- BMG v. Cox (GIL 506-511)

## **Class 19 - October 20, 2020**

### **Fair Use; Section 1201**

#### *Readings*

- Copyright Act [ Fair Use] (GIL 469)
- Lenz v. Universal Music Corp. (GIL 500-506)
- Digital Rights Management (GIL 520-531)
- Kyle Wiens, [We Can't Let John Deere Destroy the Very Idea of Ownership](#), Wired (Apr. 21, 2015).
- Section 1201 petitions

## **Class 20 - October 22, 2020**

### **Google v. Oracle**

*Guest speaker: Annemarie Bridy, Copyright Counsel, Google*

#### *Readings*

- Google v. Oracle (Canvas)
- Listen to Google v. Oracle oral argument (Oct. 7, 2020)

- Watch Pamela Samuelson, [What's at Stake in the Oracle v. Google Copyright Case?](#)

## **Class 21 - October 27, 2020**

### **Enforcement Mechanisms Old and New**

#### *Readings*

- Arista Records v. Does (GIL 276-279)
- Materials on ContentID (GIL 512-519)
- Sarah Roberts, *Behind the Screen* (Canvas) (excerpt)
- Anna Chung, [How Automated Tools Discriminate Against Black Language](#), Medium (Feb. 28, 2019)
- Hannah Bloch-Wehba, *Automation in Moderation* (Canvas)

#### *Optional*

- The Cleaners (documentary film)

## **Class 22 - October 29, 2020**

### **Platforms and the Public Sphere**

#### *Readings*

- Noam Scheiber, [When Scholars Collaborate With Tech Companies, How Reliable Are the Findings?](#), The New York Times, Jul. 12, 2020
- *Sandvig v. Sessions* (Canvas)
- *Twitter v. Barr* (Canvas)
- *Wikimedia v. NSA* (Canvas)
- *Microsoft v. Dep't of Justice* (Canvas)

## **Class 23 - November 3, 2020**

### **Labor and Employment**

#### *Readings*

- Uber v. Heller (Canvas)
- AB5 (Canvas)
- Uber, *Working Together* (Canvas)
- *What would Uber and Lyft owe to the State Unemployment Insurance Fund?* (Canvas)
- [Did Uber Just Enable Discrimination by Destination?](#), Bloomberg.com, Dec. 11, 2019.
- Kate Conger & Noam Scheiber, [The Great Google Revolt](#), The New York Times, Feb. 19, 2020.
- Ehling v. Monmouth-Ocean Hospital Service Corp. (GIL 261-265)
- N.L.R.B. v. Pier Sixty (Canvas)

## Class 24 - November 5, 2020

### Antitrust, Dominance, and Power

#### Readings

- *Meyer v. Uber & Cullinane v. Uber* (GIL 340-348)
- Note on Antitrust Law and Economics and *U.S. v. Microsoft* (GIL 631-641)
- Adrienne Jeffries & Leon Yin, [Google's Top Search Result? Surprise! It's Google](#), The Markup (Jul. 28, 2020).
- *Clearing Up Misconceptions About Google's Ad Tech Business* (Canvas)
- *Roadmap for a Case Against Google* (Canvas)