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 Grimmelmann, 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)
• 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

**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*
- 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)
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

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)
- Glawischneg-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)

Class 9 - September 15, 2020

Elections, disinformation, and political ads

Readings
- *Washington Post v. McManus* (4th Cir.) (Canvas)
- Honest ADS Act (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)
• 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*


**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)

**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*

- Accusearch (Canvas)
- Wyndham (Canvas)
Class 17 - October 13, 2020

The GDPR and the CCPA

Readings

- GDPR materials (319-332)
- Google v. CNIL (Canvas)
- Chander, Kaminski & McGeveran, *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)
- 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)
- Hannah Bloch-Wehba, *Automation in Moderation* (Canvas)

*Optional*
- The Cleaners (documentary film)

**Class 22 - October 29, 2020**

**Platforms and the Public Sphere**

*Readings*
- *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)
- 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

- Note on Antitrust Law and Economics and *U.S. v. Microsoft* (GIL 631-641)
- *Clearing Up Misconceptions About Google’s Ad Tech Business* (Canvas)
- Roadmap for a Case Against Google (Canvas)