SYLLABUS v.4 (Note – reading assignments are the same as v. 3, updates are just to the logistics information below)

The Law of Web Services and Search Engines, [276.3 sec. 1](http://www.law.berkeley.edu/php-programs/courses/coursePage.php?cID=9664&termCode=D&termYear=2012)

Fall 2012, Thursdays 3:35-5:25
Location: 145

Daphne Keller

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COURSE OVERVIEW: This course will teach practical skills and black-letter law, with a primary focus on online businesses handling “other people’s content” – UGC and social networking sites, search indexes, etc.

ASSIGNMENTS AND GRADING: 50% of students’ grades will be based on the final exam, which will be an eight-hour take-home. The other 50% will be based on short writing assignments and in-class participation. Each student will be sign up for specific dates to write a total of four short (2-3 pages) response papers:

* Two “reading response” papers commenting on the weekly readings, to be shared with the class (via a class board, either hosted by Boalt or on a shared Google Doc) the Sunday night before class.
* Two “counter-response” papers reacting to your fellow students’ reading response papers, to be posted on the class board the Tuesday night before class.

The sign-up sheet, and links to pages to post response papers, are [here](https://docs.google.com/document/d/1VBJ_HaY6ksPkqVLyFZEvuAeG0WsMyXc46bFfMklw7Bs/edit).

Students who are writing that week should review the other response papers. Students who are not writing that week are not required to do so, but are strongly encouraged.

In addition, for classes with guest speakers, I will ask each student to submit one written question in advance, and use Google Moderator to vote questions up and down.

OFFICE HOURS: I will hold office hours for at least one hour prior to class each Thursday in room 453. Other times can be scheduled as needed, but will probably be by phone or video chat.

NOTE ON TAPING: Please do not record class discussions.

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| **Topic** | **Reading Assignment**  | **Date** |
| **I. Class Introduction** | \* [Article](http://www.networkworld.com/news/2012/080712-baidu-employees-fired-and-arrested-261447.html) on Baidu Pay-for-Removal Incident\* Reputation.com’s [About page](http://www.reputation.com/company)\* [Rationalizing Internet Safe Harbors](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=979836), Mark Lemley 2007 – *Read this with an eye to policy and practical questions, don’t use it as your source for black letter law. We will delve deeper into these laws later, some have changed since this article came out in 2007*. | Aug 23 |
| **II. Intermediary Liability Considerations in Product Design and Operation** |
| A. Simple Model: CDA 230 | \* [CDA 230](http://www.law.cornell.edu/uscode/text/47/230) \* Roommates.com [9th Circuit en banc opinion](http://www.ca9.uscourts.gov/datastore/opinions/2008/04/02/0456916.pdf) – *only read the majority opinion* \* Eric Goldman’s [blog post](http://blog.ericgoldman.org/archives/2012/06/pissedconsumer.htm) on Vo Group v. Opinion Corp | Aug 30 |
| B. Detailed Prescriptive Model: DMCA |
| 1. Product Design under the DMCA | \* [17 USC 512](http://www.law.cornell.edu/uscode/text/17/512)\* [Viacom v. YouTube](http://www.ca2.uscourts.gov/decisions/isysquery/c5792ca8-db37-4107-b0f7-67548a6a5a5f/1/doc/10-3270_10-3342_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/c5792ca8-db37-4107-b0f7-67548a6a5a5f/1/hilite/)  | Sept 6 |
| 2. Operations under the DMCA | \* [Perfect 10 v. CCBill](http://scholar.google.com/scholar_case?q=ccbill&hl=en&as_sdt=2,5&case=4735249074019268133&scilh=0)\* [Capitol Records v. MP3Tunes](http://scholar.google.com/scholar_case?q=mp3tunes&hl=en&as_sdt=2,22&case=4981767972732645508&scilh=0) | Sept 13 |
| 3. Product Design and Operation outside the DMCA  | \* [Perfect 10 v Amazon](UMG%20Recordings%2C%20Inc.%20v.%20Shelter%20Capital%20Partners%20LLC%2C%20667%20F.3d%201022%20%289th%20Cir.%202011%29) \* [Cartoon Network v. CSC Holdings](http://scholar.google.com/scholar_case?q=cablevision+vs.+cartoon&hl=en&as_sdt=2,22&case=13763893657469687275&scilh=0)  | Sept 20 |
| C. Intermediary Liability Outside the US  | \* [EU Copyright Directive](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML) — *only read* Article 5, Exceptions and Limitations\* [EU E-Commerce Directive](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0031:EN:HTML) — *only read* Articles 12-15 on Liability of Intermediary Service Providers\* [SABAM v Netlog](http://curia.europa.eu/juris/document/document.jsf?text=&docid=119512&pageIndex=0&doclang=EN&mode=doc&dir=&occ=first&part=1&cid=996174) CJEU Ruling\* Wired UK [News Coverage](http://www.wired.co.uk/news/archive/2012-02/14/meltwater-vs-nla) of UK Meltwater Ruling\* [Techdirt’s Take](http://www.techdirt.com/articles/20120618/07562119368/proposed-licensing-newspaper-snippets-could-threaten-users-blogs-facebook-twitter-germany.shtml) on Proposed New German IP Rights for News Excerpts \* [Overview](http://askkorealaw.com/2011/02/27/tv/) of Remote DVR caselaw in Japan, Korea, and Singapore | Sept 27 |
| D. Legal Removals “Gotchas”  | \* [Sample Patient Contract from Medical Justice](http://doctoredreviews.files.wordpress.com/2011/02/piedmont.pdf)\* [Doe v. Friendfinder](http://www.citmedialaw.org/sites/citmedialaw.org/files/2008-02-7-Friendfinder%20Order.pdf) — *only read* Section II.B. (pages 18-35) \* Wired [Coverage](http://www.wired.com/threatlevel/2011/06/hot-news-doctrine/) of Theflyonthewall.com Hot News Case\* [Hermes Court Order](http://www.scribd.com/doc/92046940/Hermes-v-Does-12-Civ-1623-S-D-N-Y-Apr-30-2012-Judgment) \* Jeffrey Rosen, [The Right to Be Forgotten](http://www.stanfordlawreview.org/online/privacy-paradox/right-to-be-forgotten) | Oct 4 |
| **III. Jurisdiction Concerns in Internationalizing your Products**  | \* Goldsmith and Wu, [Digital Borders](http://www.legalaffairs.org/issues/January-February-2006/feature_goldsmith_janfeb06.msp) **\*** [Dow Jones v. Gutnick](http://www.austlii.edu.au/au/cases/cth/HCA/2002/56.html) – *extract TBA*, probably Paragraphs 1-55\* SPEECH Act [context](http://en.wikipedia.org/wiki/SPEECH_Act) and [statute](http://www.gpo.gov/fdsys/pkg/PLAW-111publ223/html/PLAW-111publ223.htm)  | Oct 11 |
| **IV. Direct Use of Third Party Content and Data** |
| A. “Scraping” content from third parties | \* [CFAA](http://www.law.cornell.edu/uscode/text/18/1030) \* [US v. Nosal](http://scholar.google.com/scholar_case?q=us+v.+nosal&hl=en&as_sdt=2,48&as_ylo=2012&as_vis=1&case=25418282339171009&scilh=0) \* [Snap-On v. O’Neil](http://www.scribd.com/doc/30424890/Snap-on-Business-Tools-v-O-Neil-Assocs-N-D-Ohio)  | Oct 18 |
| B. Users’ Data |
| 1. Product Design and User Privacy | \* EU Data Protection Summary Pages on [Data Controllers](http://ec.europa.eu/justice/data-protection/data-collection/index_en.htm), [Legal Uses of Personal Data](http://ec.europa.eu/justice/data-protection/data-collection/legal/index_en.htm), and [Obligations of Controllers](http://ec.europa.eu/justice/data-protection/data-collection/obligations/index_en.htm) \* Facebook [Privacy Policy](http://www.facebook.com/about/privacy/) – *please read* *the “Information we receive and how it is used” section and skim remaining sections*\* FTC [Facebook Enforcement Materials](http://www.ftc.gov/os/caselist/0923184/index.shtm) -- *please read the Complaint and the Decision and Order* | Oct 25 |
| 2. Responding to Legal Requests for User Data | \*\* GUEST LECTURERS: Richard Salgado (Google) and Jennifer Granick (Stanford)\*\*ASSIGNMENT: Submit one question for the guest speakers\* [NYT Editorial](http://www.nytimes.com/2010/11/03/opinion/03wed1.html?_r=1&ref=todayspaper) on CALEA II  **\*** [18 USC Chapter 121](http://www.law.cornell.edu/uscode/text/18/part-I/chapter-121) - STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS\* [18 USC Chapter 119](http://www.law.cornell.edu/uscode/text/18/part-I/chapter-119) - WIRE AND ELECTRONIC COMMUNICATIONS INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS\* [18 USC Chapter 206](http://www.law.cornell.edu/uscode/text/18/part-II/chapter-206) - PEN REGISTERS AND TRAP AND TRACEDEVICES\* [50 USC Chapter 36, Subchapter I](http://www.law.cornell.edu/uscode/text/50/chapter-36/subchapter-I) - ELECTRONIC SURVEILLANCE | Nov 1 |
| **V. In the Trenches** |
| A. Being GC | \*\* GUEST LECTURERS: Alex Macgillivray (General Counsel of Twitter) and Ramsey Homsany (General Counsel of Dropbox)\*\*ASSIGNMENT: Submit one question for the guest speakers\* Read any 3 articles of your choice in the Policy Information section of Twitter’s [Report Abuse or Policy Violations](https://support.twitter.com/groups/33-report-abuse-or-policy-violations) page \* Search your favorite online news source for recent legal news about Twitter\* Search [Dropbox’s Help Center](https://www.dropbox.com/help/search) for subjects we have covered (copyright, privacy, reporting abusive content, etc.) and read 3 articles of your choice\* Search your favorite online news source for recent legal news about Dropbox | Nov 8 |
| B. Going to Washington | \* [SOPA, Final House Version](http://thomas.loc.gov/home/gpoxmlc112/h3261_ih.xml) — *only read* through Section 103\* Eric Goldman, [Celebrating (?) the Six Month Anniversary of SOPA’s Demise](http://www.forbes.com/sites/ericgoldman/2012/07/18/celebrating-the-six-month-anniversary-of-sopas-demise/), Forbes July 2012\* CDT’s [SOPA Summary](https://www.cdt.org/files/pdfs/SOPA%202-pager%20final.pdf) | Nov 15 |
| C. Other Balls Not to Drop | \* *Just skim* Twitter’s [Terms of Service](https://twitter.com/tos/) \* CAN-SPAM [Compliance Guide](http://business.ftc.gov/documents/bus61-can-spam-act-compliance-guide-business/)\* California Labor Code [Section 2870](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=02001-03000&file=2870-2872)\* [Article](http://www.bizjournals.com/sanfrancisco/news/2012/06/27/netflix-loses-a-round-in-ada-closed.html?page=all) on Netflix ADA Case\* *Just skim* the Bureau of Industry and Security [Page on Encryption and Export Controls](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=02001-03000&file=2870-2872) \* The Oatmeal’s [Response](http://theoatmeal.com/blog/funnyjunk_letter) to FunnyJunk Litigation Threat, and Wikipedia [Summary](http://en.wikipedia.org/wiki/The_Oatmeal_and_FunnyJunk_legal_dispute) of the Sites’ Conflict \* Popehat on [How to Write a Takedown Request](http://www.popehat.com/2012/07/08/how-to-write-a-takedown-request-without-running-afoul-of-the-streisand-effect/) | TO BE SCHEDULED – make-up for Nov 22 |