SYLLABUS v. 1

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

Spring 2014, Thursdays 3:35-5:25  
Location: 141

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. One writing assignment will be a privacy policy drafting exercise conducted in small groups. The other will be a series of short response papers based on reading assignments. Each student will be sign up for specific dates to write and share with the class a total of three short (1-2 pages) papers. These can be either:

* “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.
* “Counter-response” papers reacting to your fellow students’ reading response papers, to be posted on the class board the Tuesday night before class.

The Response papers are not to summarize the reading, they are to present a reaction to or critique of the reading. They can be philosophical or practical; they can be general or nit-picking; but they should represent your own thinking on the materials. The sign-up sheet, and links to pages to post response papers, are [here](https://docs.google.com/document/d/1-Pd7Z00Zz7oZxz2b0-p2SXbWjr9MLhvkxx821znRdaU/edit).

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

If we add a guest speaker, students will submit advance questions for the speaker as well.

OFFICE HOURS: I will hold office hours for at least one hour prior to class each Thursday in room \_\_\_\_. 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** | **Notes** |
| **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) – *Don’t bother watching the video*  \* [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*. | Jan 9 |  |
| **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://scholar.google.com/scholar_case?q=521+f.3d+1157&hl=en&as_sdt=2006&case=12982314326945878032&scilh=0) – *only read the majority opinion*  \* Eric Goldman’s Forbes [article](http://www.forbes.com/sites/ericgoldman/2013/11/25/should-thedirty-website-be-liable-for-encouraging-users-to-gossip/) on Jones v. Dirty World | Jan 23 |  |
| B. Detailed Prescriptive Model: DMCA | | |  |
| 1. Product Design under the DMCA | \* [17 USC 512](http://www.law.cornell.edu/uscode/text/17/512) – *read closely, we will discuss statutory text in depth*  \* [UMG v. Shelter Capital](http://scholar.google.com/scholar_case?case=10822678381455684180&q=667+F.+3d+1022&hl=en&as_sdt=2,5), *up through Discussion Section III only* | Jan 30 |  |
| 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=Capitol+Records+v.+MP3Tunes&hl=en&as_sdt=2006&as_vis=1&case=6863858502050850058&scilh=0) | Feb 6 |  |
| 3. Product Design and Operation outside the DMCA | \* [Perfect 10 v Amazon](http://scholar.google.com/scholar_case?q=508+F.3d+1146&hl=en&as_sdt=2,5&case=9280547131690965273&scilh=0)  \* [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) | Feb 13 |  |
| C. Intermediary Liability Outside the US (mostly EU) | \* [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  \* Stanford CIS [blog post](http://cyberlaw.stanford.edu/blog/2013/10/european-court-human-rights-holds-delfiee-liable-anonymous-defamation) on ECHR ruling in Delfi AS v. Estonia  \* [Overview](http://askkorealaw.com/2011/02/27/tv/) of Remote DVR caselaw in Japan, Korea, and Singapore – *skim, this is dated and not authoritative* | Feb 20 |  |
| D. Legal Removals “Gotchas” | \* [Sample Patient Contract from Medical Justice](http://doctoredreviews.files.wordpress.com/2011/02/piedmont.pdf)  \* Proskauer’s short [summary](http://privacylaw.proskauer.com/2008/04/articles/communications-decency-act/immunity-under-the-cda-has-its-limits-according-to-two-recent-federal-court-decisions/) of Friendfinder case  \* 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) – *focus on the list of orders at the end*  \* Jeffrey Rosen, [The Right to Be Forgotten](http://www.stanfordlawreview.org/online/privacy-paradox/right-to-be-forgotten) | Feb 27 |  |
| **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) –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) | Feb 28 MAKE-UP FRIDAY CLASS in Room 141 |  |
| **IV. Direct Use of Third Party Content and Data** | | |  |
| A. “Scraping” content from third parties | \* *Recommended but not required:* [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)  \* Hypothetical for Class Discussion – *to be distributed* | Mar 6 | In-Class Scraping Hypothetical Exercise |
| 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*  \* Privacy Drafting Exercise instructions – *to be distributed* | Mar 13 | Take-Home Privacy Drafting Exercise Starts |
| 2. Privacy Policies and Responding to Legal Requests for User Data | \* CDT’s [ECPA Page](https://www.cdt.org/issue/wiretap-ecpa)  *\* Possible Additional Materials – if something interesting happens* | Mar 20 | Take-Home Privacy Drafting Exercise Due |
| **V. In the Trenches** | | |  |
| TBD | TBD | Apr 3 |  |
| 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) | Apr 10 |  |
| C. Other Balls Not to Drop | \* *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.practicalecommerce.com/articles/58946-U-S-Proposes-ADA-Compliance-for-Ecommerce-Websites) on proposed DOJ rulemaking for ADA compliance  \* *Skim even more lightly* the Bureau of Industry and Security [FAQ on Encryption and Export Controls](http://www.bis.doc.gov/index.php/policy-guidance/encryption/encryption-faqs)  \* 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/) | Apr 17 | Note as of Jan 1 the Oatmeal page is broken – I contacted the site, with luck it’ll be fixed by April. |