

REGULATED DIGITAL INDUSTRIES:

TELECOMMUNICATIONS LAW & POLICY FOR A MODERN ERA

LAW226.4 ▪ TuWTh 1120am–1230pm ▪ 134 Law Building

Prof. Narechania ▪ 689 Simon ▪ OH: Th 300pm–430pm (430pm–500pm by appointment)

COURSE DESCRIPTION

The telecommunications industry (including internet-related services) is one of the largest and most influential sectors of the economy. It is also the site of one of our most complex legal regimes, blending features of administrative law, antitrust law, and constitutional law, among others. How should we regulate the interconnections between the networks that make telephone and internet communication possible? How should we allocate scarce spectrum resources? Should we require internet service providers to comply with net neutrality rules? What, if anything, should government do to ensure media representation of diverse voices? How do copyright concerns interact with broadcast regulation? The answers to these questions directly impact the structure of the telecommunications industry. More fundamentally, these questions implicate matters of distribution, efficiency, fairness, monopoly power, and the structure of government. This course examines these issues through a study of some of the foundational questions and modern conflicts in domestic (U.S.) telecommunications law and internet policy.

LEARNING OUTCOMES

You will be expected to:

- gain knowledge and understanding of substantive U.S. telecommunications law and policy;
- engage in legal analysis, problem-solving, and reasoning;
- communicate—in writing and orally—key telecommunications law concepts; and
- use the law to solve real-world problems and to create a better society.

In particular, you will be expected to:

- identify and analyze justifications for regulatory interventions into telecommunications markets;
- understand the statutory (and concomitant regulatory) system governing various aspects of the telecommunications economy, including wireline telephone service, broadband internet access, cable television transmission, and spectrum;
- analyze complex policy problems in telecommunications and internet law, including network neutrality, interconnection, and online service provider liability;
- evaluate existing and proposed telecommunications regulations to address issues of fairness, discrimination, distribution, and total welfare.

COURSE MATERIALS

We will use the following texts and materials in this course:

- NUECHTERLEIN & WEISER, *DIGITAL CROSSROADS* (2d ed. 2013) [DC];
- Narechania, *Regulated Digital Industries Reader* [RDIR]; and
- other supplemental materials, such as news articles, as are posted to bCourses [bC].

COURSE SCHEDULE

For the first class, please come prepared to discuss Topic 1 (below). Each topic is roughly congruent with one class session, though I may adjust the schedule as we move through the semester. Hence, you should generally prepare one complete syllabus assignment past the end of the previous class.

Fundamentals

1. Introductions: Syllabus & A Framework for the Course
RDIR: 1-14; bC: Syllabus

Regulations and Regulators

2. Justifying Regulation
DC: 3-17; RDIR: 15-17
3. Statutory and Institutional Structure
Guest Lecture: Kristi Thompson, Division Chief, Enforcement Bureau
(Telecomm. Consumers Division), Federal Communications Commission
4. Statutory and Institutional Structure (Part II)
DC: 17-22; RDIR: 17-29; bC: “Who We Are” (*from* [WWW.FCC.GOV](http://www.fcc.gov))

Regulating Physical Networks

Common Carrier (Wireline) Regulation

Spectrum (Wireless) Regulation

Cable Regulation

The Internet

Internet Service

Network Neutrality

Internet Interconnection

Content

Copyrighted Content

Content-Related Competition Concerns

First Amendment Concerns

Online Service Providers

Back to Basics: Why Regulate? Who Regulates?

ASSESSMENTS AND EXAMINATIONS

Grading and Examinations

The grade you earn will be based primarily on *one comment assignment* (30 points), as well as *one final examination* (70 points), consisting of two parts:

- a limited open-book, short-answer (e.g., one-to-two sentences) portion consisting of 3-10 questions; and
- a limited open-book, essay portion consisting of 1-3 questions.

Professionalism, attendance, and high-quality participation (see details below) may serve as a tiebreaker for students who are at the border between grades. Note that high-*quality* participation and high-*quantity* participation are not the same: Students whose participation tends to drown out others' voices may be treated the same as students who do not participate at all.

POLICIES

Berkeley Law Policies

Credit Hours: One credit hour at Berkeley Law is an amount of work that reasonably approximates three to four hours of work per week for 15 weeks, including a) classroom time, b) time spent preparing for class, c) time spent studying for, and taking, final exams, d) time spent researching, writing, and revising papers and other written work, and e) time spent preparing for and completing any other final project, presentation, or performance. For the purposes of these calculations, 50 minutes of classroom instruction counts as one hour, and the 15 weeks includes the exam period. You can expect to spend this amount of time per unit per week on out-of-class, course-related work as described above.

Exams and Accommodations: Because Berkeley Law is committed to anonymous grading, Student Services schedules all exams, including accommodated exams. Any student who seeks an accommodated or rescheduled exam for documented medical reasons or for religious observance should contact Student Services: 280 Simon Hall; 510-643-2744; or imayer@law.berkeley.edu.

Course Policies

Attendance and Participation: If, *for any reason*, you are not prepared to participate in class, you may drop a “space-out” note on the lectern *before the start of class*. You will not be called on that day. You may exercise this option *up to eight times per semester*. No reason is required (or desired) for exercising this option, and your decision to do so will not count against you for any grading purposes. Otherwise, please come prepared to *each* class. Regular attendance is required even if you are using a space-out note. (If you must miss a class—in whole or in part—due to an unavoidable conflict, that absence will count as a space-out request. And please note that parents and guardians are welcome to bring their children to class in the event of a childcare disruption.) You are responsible for tracking your own use of space-out notes. Any space-out request beyond the eight options described above will be treated, for grading purposes, as an unprepared participation (though I may make, in my sole discretion, exceptions for extenuating personal circumstances).

Laptops: You may use a laptop or other, similar device to access reading assignments during class and take notes. However, I encourage you to take handwritten notes. (Research suggests that most students are likely to better absorb information this way.) Using any computing device (including mobile phones) for non-class-related activities is *strictly prohibited*. This is not a paternalistic rule: It is an externality regulation. Your

internet activity is likely distracting to your colleagues sitting near you. Moreover, if your internet activity affects your contributions to class, then our entire discussion suffers.

Class Recording: Our course lectures are not recorded, and I generally do not permit students to record lectures (though I do make limited exceptions for disability accommodations approved by Student Services and the Disabled Students' Program). This is because the success of our class depends on active student participation—but research suggests that students are less likely to participate if they know their discussions are recorded. (I would be required to disclose the fact of any general recording, though I need not [and do not] disclose when a class is recorded under a disability accommodation.) I may make, in my sole discretion, limited exceptions to this policy for extenuating class-wide circumstances.

MISCELLANY

Office Hours

I will hold regular, open office hours on Thursdays from 300pm–430pm. You may also reserve an appointment with me at 430pm or 445pm on Thursdays using the sign-up sheet posted outside my office door (689 Simon). I will also do my best to be available at other times. Feel free to use these times as a resource to ask questions about the course, about law school, or about almost anything else.

I will respond to questions by email, but only if each question is accompanied by your best attempt at a reasoned answer. This helps me to identify the source of your question and to craft more helpful responses.

Slides

The slides are signposts for our discussion, and they will rarely—if ever—contain everything you need to know about a subject to succeed in this class. I will periodically post the slides on bCourses, usually after each major unit of material.

A Final Note

In order to be a great lawyer, you must be able to effectively engage with *all* sides of an argument. To help develop this skill, we will maintain an atmosphere in which we admit open discussion about the law and policy, in which we are open to considering new ideas, and in which we respect each other's opinions. We will practice respect, empathy, and patience in our class.