

Cyberlaw Syllabus**Cyberlaw Syllabus**

Law 276.1
Spring 2013
Mondays and Wednesdays 2:00-3:30
3 Credits
School of Information South Hall Room 202
Course Control Number: 49946

Course start date:
January 7, 2013 (Law)
January 23, 2013 (School of Information)

Instructors

Chris Jay Hoofnagle 344 Boalt North Addition Berkeley, CA 94720 510-643-0213 choofnagle@law.berkeley.edu	Daphne Keller 453 Boalt (Visitors' Office) Berkeley, CA 94720 650-390-7197 daphne@law.berkeley.edu
--	--

Course Description

The emergence of global digital networks, such as the Internet, and digital technologies that enhance human abilities to access, store, manipulate, and transmit vast amounts of information has brought with it a host of new legal issues that lawyers preparing to practice in the 21st century will need to understand and address. Although many are trying to "map" existing legal concepts onto problems arising in cyberspace, it is becoming increasingly evident that this strategy sometimes doesn't work. In some cases, it is necessary to go back to first principles to understand how to accomplish the purposes of existing law in digital networked environments. The course will explore specific problems in applying law to cyberspace in areas such as intellectual property, privacy, content control, and the bounds of jurisdiction. Students with familiarity with the Internet and its resources or with backgrounds in some of the substantive fields explored in this course are especially welcome, but there are no formal prerequisites.

Texts*Required for the Course*

Software & Internet Law, 4th Edition

Mark A. Lemley, Peter S. Menell, Robert P. Merges, Pamela Samuelson, Brian W. Carver,

Publisher: Aspen Publishers

ISBN: 9780735589155

Grades

There are two basic graded assignments in this course: a paper of significant length and class participation. The paper will count for 75% of your grade, and class participation 25%.

Class participation grades will be based in part on discussion and in part on a group Privacy Policy drafting exercise spread out over two classes. In the first (3/18/13), students team up to devise privacy protections and written privacy policies for assigned online products or services. In the second (4/23/13), teams will present their work and the class will discuss.

Written work for the assignment should be largely completed in class on the first day, but teams are free to make any revisions up until the week before the second class. At that point completed work should be emailed to the class for

discussion the following week.

Each student will be required to write a paper, due at the end of the term, of approximately 20-35 pages (5,000-8,750 words), on a topic related to those covered during the semester. Additionally, each student will be required to propose a paper topic and provide a detailed outline during the semester. These will not be graded.

Note: JD students (but not LLM students) must write a paper that exceeds 7500 words or 30 pages. This enables the course to receive the "Seminar" designation under the Law School's Grading Rules and Policies which then enables us to award a greater number of HH or H grades than would be permitted under the usual grading rules and policies.

Because of the size of this class, participation is very important. Please read for each class and be prepared to discuss the material. We will follow an on-call policy: students with last names beginning with A-K will be on call Mondays, and L-Z on Wednesdays.

Attendance

Since you are an adult, you can choose to attend or not. However, being absent cannot be good for the 25% of your grade that depends upon in-class discussion.

Office Hours

Chris Hoofnagle: I am in my office (344 Boalt) Mondays through Fridays from 10-4 reliably. Please email me to set an appointment, as travel and other commitments complicate things.

Daphne Keller: I do not work from Berkeley, so please contact me by email (daphne@law.berkeley.edu) to schedule meetings by phone or in person. I can be in Berkeley for in-person meetings in the hour before class, 1-2 Mondays and Wednesdays in Boalt 453, with advance notice.

Events

Berkeley is a center for the study of computers and privacy law. You might be interested in optional events during the semester, the most salient of which are included in the class schedule below. The TRUST Seminar meets on Thursdays at 1 on North Campus (starting in late January). Many of these seminars are relevant to this class, and there's free lunch:

<http://www.truststc.org/seminar.htm> (Note: this link is dead and we will update it as soon as it is fixed)

Schedule of Classes

Class	Date	Topic	Assignment	Lead
1:M	1/7	Intro	Lawrence Lessig, <i>The Law of the Horse: What Cyberlaw Might Teach</i>, 113 Harvard Law Review 501 (1999), available at http://cyber.law.harvard.edu/wg_home/uploads/199/1999-05.pdf. Jack Goldsmith and Timothy Wu, <i>Digital Borders, Legal Affairs</i>, Jan. 2006, available at http://www.legalaffairs.org/issues/January-February-2006/feature_goldsmith_janfeb06.msp?; Copyright Alert System (CAS) readings. All on bSpace.	CH&DK
2:W	1/9	Common Law Privacy	<i>Lake v. Wal-Mart Stores</i>, 589 N.W. 231 (1998), available at http://scholar.google.com/scholar_case?case=13650566656145808381&hl=en&as_sdt=2&as_vis=1&oi=scholar <i>Fraley v. Facebook</i>, 830 F.Supp.2d 785 (2011), available at http://scholar.google.com/scholar_case?case=2449132774919250154&hl=en&as_sdt=2&as_vis=1&oi=scholar	CH

3:M	1/14	Jurisdiction 1	<i>Cybersell, Inc. v. Cybersell, Inc.</i>, 130 F.3d 414 (9th Cir. 1997). SAIL 320-327. <i>Zippo Mfg. Co. v. Zippo Dot Com, Inc.</i>, 952 F. Supp. 1119 (W.D. Pa. 1997). SAIL 327-334. <i>Dow Jones v. Gutnick</i>, HCA 56 para 15 (10 Dec. 2002) (High Ct. Australia). SAIL 385-394.	DK
4:W	1/16	Jurisdiction 2	<i>League Against Racism and Antisemitism v. Yahoo! Inc.</i>, County Court of Paris (Nov. 11, 2000). SAIL 363-374. <i>Yahoo Inc. v. La Ligue Contre Le Racisme et L'antisemitisme</i>, 433 F.3d 1199 (9th Cir. 2006) (en banc). SAIL 374-385. <i>Dudnikov v. Chalk & Vermilion Fine Arts, Inc.</i>, 514 F.3d 1063 (10th Cir. 2008). SAIL 344-356. Simson Garfinkel, <i>Welcome to Sealand. Now Bugger Off</i>, Wired Magazine (July 2000).	DK
M	1/21		MLK Day No Class	
5:W	1/23	Censorship 1	<i>Reno v. ACLU</i>, 521 U.S. 844 (1997). SAIL 704-718. <i>Ashcroft v. ACLU</i>, 542 U.S. 656 (2004). SAIL 718-726. <i>United States v. American Library Association</i>, 539 U.S. 194 (2003). SAIL 726-735 School of Information students only: Orin S. Kerr, <i>How to Read a Legal Opinion</i>, 11 Green Bag 2d 51 (2007), available at http://ssrn.com/abstract=1160925	CH
6:M	1/28	Censorship 2	<i>Nitke v. Gonzales</i>, 413 F. Supp. 2d 262 (S.D.N.Y. 2005). SAIL 735-741. <i>United States v. Kilbride</i>, Nos. 07-10528 & 07-10534 (9th Cir. Oct. 28, 2009) (read only up to section II. B, i.e., pages 1-23). SAIL 741-751	CH
T	1/29	Optional	Professor Lawrence Lessig delivers the annual Jorde lecture on, "The Corrupting Influence of Money on Politics," 5-6:30 PM at the Law School	
7:W	1/30	CDA 230 1	47 U.S.C. § 230, available at http://www.law.cornell.edu/uscode/text/47/230. <i>Zeran v. America OnLine, Inc.</i>, 129 F.3d 327 (4th Cir. 1997). SAIL 665-670. <i>Blumenthal v. Drudge</i>, 992 F.Supp. 44 (D.D.C. 1998). SAIL 670-675. <i>Barrett v. Rosenthal</i>, 40 Cal. 4th 33 (2006). SAIL 675-688.	DK
8:M	2/4	CDA 230 2	<i>Fair Housing Council of San Fernando Valley v. Roommates.com, LLC</i>, 521 F.3d 1157 (9th Cir. 2008) (en banc). SAIL 688-696.	DK

			<i>Barnes v. Yahoo!, Inc.</i> , No. 05-36189 (9 th Cir. Jun. 22, 2009). SAIL 697-704.	
9:W	2/6	Liability for Distributing Information Obtained by Others	<i>Barnicki v. Vopper</i> , 532 U.S. 514 (2001). SAIL 806-814. <i>Pavlovich v. Superior Court</i> , 29 Cal. 4 th 262 (2002). SAIL 356-362. <i>DVD CCA v. Bunner</i> , 31 Cal. 4 th 864 (Cal. 2003). SAIL 814-837. <i>DVD CCA v. Bunner</i> , 116 Cal. App. 4 th 241 (Cal. Ct. App. 2004). SAIL 837-846.	CH
10:M	2/11	Liability for Distributing Information Obtained by Others	<i>O'Grady v. Superior Court</i> , 139 Cal. App. 4 th 1423 (Cal. Ct. App. 2006). SAIL 846-876. <i>Jean v. Massachusetts State Police</i> , 492 F.3d 24 (1 st Cir. 2007). SAIL 876-882. <i>Bank Julius Baer & Co. v. Wikileaks</i> , (N.D. Cal.) (2008) (read linked summary), http://www.eff.org/cases/bank-julius-baer-co-v-wikileaks	CH
11:W	2/13	Copyright Intermediaries Without the DMCA	<i>MGM v. Grokster</i> , 545 U.S. 913 (2005). SAIL 562-583. <i>Cartoon Network, LP v. CSC Holdings, Inc.</i> , 536 F.3d 121 (2d Cir. 2008). SAIL 514-526.	DK
M	2/18		President's Day No Class	
12:W	2/20	Copyright Intermediaries Within the DMCA	Digital Millenium Copyright Act, 17 USC § 512, available at http://www.law.cornell.edu/uscode/text/17/512 <i>Perfect 10, Inc. v. ccBill LLC</i> , 488 F.3d 1102 (9 th Cir. 2007), read up through Discussion Section I (512 Safe Harbors), available at http://scholar.google.com/scholar_case?q=ccbill&hl=en&as_sdt=2,5&case=4735249074019268133&scilh=0 <i>UMG Recordings, Inc. v. Shelter Capital Partners</i> , 667 F. 3d 1022 (9 th Cir. 2011) read up through Discussion Section 3, available at http://scholar.google.com/scholar_case?case=10822678381455684180&q=667+F.+3d+1022&hl=en&as_sdt=2,5	DK
W	2/20		Paper Topic Due—Email to Chris	
13:M	2/25	Copyright Intermediaries and Fair Use	17 U.S.C. 107, SAIL 104 <i>Perfect 10, Inc. v. Amazon.com, Inc.</i> , 508 F.3d 1146 (9 th Cir. 2007) read Section I (Background) and Section III.C. (Fair Use Defense), available at http://scholar.google.com/scholar_case?case=9280547131690965273&hl=en&as_sdt=2&as_vis=1&oi=scholar <i>Sega Enterprises Ltd. v. Accolade, Inc.</i> , 977 F.2d 1510 (9 th Cir. 1992). SAIL 116-127	DK

14:W	2/27	Licenses for Sharing and Collective Innovation	Eric Raymond, <i>The Cathedral and the Bazaar</i>, read up through Section 5 (How Many Eyeballs Tame Complexity), available at http://www.catb.org/~esr/writings/cathedral-bazaar/cathedral-bazaar/ GNU General Public License v. 3, available at http://www.gnu.org/licenses/gpl.html Creative Commons About Page, available at http://creativecommons.org/about Creative Commons Attribution 3.0 License (aka CC-BY), available at http://creativecommons.org/licenses/by/3.0/legalcode	DK
Th	2/28	Optional	Annual BCLT Privacy Lecture Featuring Professor Joel Reidenberg, 3:30 PM, Bancroft Hotel	
15:M	3/4	Anti-Circumvention	17 U.S.C. 1201(a)-(c), available at http://www.law.cornell.edu/uscode/text/17/1201 <i>Universal City Studios, Inc. v. Reimerdes</i>, 111 F. Supp.2d 294 (SDNY 2000), SAIL 594-609 <i>Chamberlain Group, Inc. v. Skylink Technologies, Inc.</i>, 381 F.3d 1178 (Fed. Cir. 2004), SAIL 611-622.	DK
16:W	3/6	International safe harbors for intermediaries	EU E-Commerce Directive Articles 12-15 on Liability of Intermediary Service Providers, available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0031:EN:HTML <i>L'Oreal v. eBay</i> CJEU Ruling Paragraphs 3-25 and 26-50, available at <i>SABAM v Netlog</i> CJEU Ruling, available at http://curia.europa.eu/juris/document/document.jsf?text=&docid=119512&pageIndex=0&doclang=EN&mode=doc&dir=&occ=first&part=1&cid=996174	DK
17:M	3/11	4 th Am and online privacy	<i>US v. Forrester</i>, 512 F.3d 500 (9th Cir. 2007), available at http://scholar.google.com/scholar_case?case=11567257062589342767&hl=en&as_sdt=2&as_vis=1&oi=scholar <i>United States v. Warshak</i>, 631 F.3d 266 (6th Cir. 2010) SAIL 940-954 <i>Ontario v. Quon</i>, 130 S.Ct. 2619 (2010). SAIL 954-965.	CH
18:W	3/13	4 th Am and online privacy	<i>State v. Reid</i>, 945 A.2d 26 (N.J. 2008) SAIL 928-940. <i>Hepting v. AT&T</i>, 439 F. Supp. 2d 974 (N.D. Cal. 2006) (pages 1-36) SAIL 965-984; <i>United States v. Arnold</i>, 533 F.3d 1003 (9th Cir. 2008). SAIL 984-991.	CH
19:M	3/18	Privacy Policy Drafting Exercise Part 1	Mark Foley, INTERNET LAW - The FTC's Website Privacy and Security Rules for Every Business, Monday, November 19, 2007; TRUSTe Guidance on Model Web Site Disclosures	

			(both on bSpace)	
20:W	3/20	Statutory Privacy	<i>In re Pharmatrak, Inc. Privacy Litigation</i> , 329 F.3d 9 (1 st Cir. 2003). SAIL 891-899. <i>Konop v. Hawaiian Airlines, Inc.</i> , 302 F.3d 868 (9 th Cir. 2002). SAIL 902-909	CH
W	3/20		Paper Outline Due—Email to Chris	
Th	3/21	Optional	BCLT Privacy Law Forum—Silicon Valley	
M	3/25		Spring Break No Class	
W	3/27		Spring Break No Class	
21:M	4/1	5 th Am and encryption	<i>In re Grand Jury Subpoena (Boucher)</i> , No. 2:06-mj-91, 2007 WL 4246473 (D. Vt. Nov. 29, 2007), available at http://federalevidence.com/pdf/2009/03-March/InreBoucherI.pdf <i>In re Grand Jury Subpoena (Boucher)</i> , No. 2:06-mj-91, 2009 WL 424718 (D. Vt. Feb. 19, 2009), available at http://federalevidence.com/pdf/2009/03-March/InreBoucherII.pdf <i>United States v. Fricosu</i> , No. 10-cr-00509-REB-02, 2012 WL 182121 (D. Colo. Jan. 23, 2012), available at http://scholar.google.com/scholar_case?q=United+States+v.+Fricosu&hl=en&as_sdt=2,5&case=7486865546677786730&scilh=0	CH
M	4/1	Optional	Evgeny Morozov to discuss, <i>To Save Everything, Click Here</i> , 4-6 PM at the law school	
22:W	4/3	CFAA criminal claims	<i>United States v. Morris</i> , 928 F.2d 504 (2d Cir. 1991). SAIL 1097-1103. <i>United States v. Riggs</i> , 739 F. Supp. 414 (N.D. Ill. 1990). SAIL 1103-1112. <i>United States v. Ivanov</i> , 175 F. Supp. 2d 367 (D. Conn. 2001). SAIL 1112-1118.	CH
23:M	4/8	CFAA and civil scraping claims	<i>United States v. Nosal</i> , 676 F.3d 854 (9 th Cir. 2012)(en banc), available at http://www.ca9.uscourts.gov/datastore/opinions/2012/04/10/10-10038.pdf <i>Snap-on Business Solutions Inc. v. O'Neil & Associates, Inc.</i> , 708 F.Supp.2d 669, 682 (N.D. Ohio 2010), available at http://www.scribd.com/doc/30424890/Snap-on-Business-Tools-v-O-Neil-Assocs-N-D-Ohio	DK
24:W	4/10	Search engines and the "right to be forgotten"	Assignments TBD	DK
25:M	4/15	Anonymity	Brief of Amicus Curiae The Electronic Frontier Foundation in <i>Dominick v. Myspace, Inc.</i> , (Cir. Ct. of Cook County Ill. 2008), available at http://www.eff.org/files/filenode/dom_v_myspace/Motion%20AC%20filed.pdf <i>Doe v. 2themart.com Inc.</i> , 140 F. Supp. 2d 1088 (W.D.	CH

			Wash. 2001). SAIL 761-767. <i>Dendrite International, Inc. v. Doe No. 3</i> , 775 A.2d 756 (N.J. Super. A.D. 2001). SAIL 767-778.	
26:W	4/17	Anonymity	<i>Doe v. Cahill</i> , 884 A.2d 451 (Del. 2005). SAIL 778-791 <i>Mobilisa, Inc. v. Doe</i> , 170 P.3d 712 (Ariz. Ct. App. 2007). (excerpt on SAIL 791). <i>Krinsky v. Doe 6</i> , 159 Cal. App. 4 th 1154 (Cal. Ct. App. 2008). SAIL 791-805.	CH
27:M	4/22	FTC Privacy Cases	In re Facebook In re DesignerWare Wyndham Motion to Dismiss (MTD) -- FTC v. Wyndham Worldwide Corp., et al. (U.S. Dist. Court for Dist. of Arizona) (all on bSpace)	CH
28:Tu	4/23	Privacy Policy Drafting Exercise Part 2	TBD Last calss for law students	DK
29:W	4/24	School of Info Only: Jurisdiction, compressed	<i>Cybersell, Inc. v. Cybersell, Inc.</i> , 130 F.3d 414 (9 th Cir. 1997). SAIL 320-327 <i>Dow Jones v. Gutnick</i> , HCA 56 para 15 (10 Dec. 2002) (High Ct. Australia). SAIL 385-394 Simson Garfinkel, <i>Welcome to Sealand. Now Bugger Off</i> , Wired Magazine (July 2000)	DK
30:M	4/29	School of Info Only: Common Law Privacy	<i>Lake v. Wal-Mart Stores</i> , 589 N.W. 231 (1998), available at http://scholar.google.com/scholar_case?case=13650566656145808381&hl=en&as_sdt=2&as_vis=1&oi=scholar <i>Fraley v. Facebook</i> , 830 F.Supp.2d 785 (2011), available at http://scholar.google.com/scholar_case?case=2449132774919250154&hl=en&as_sdt=2&as_vis=1&oi=scholar	CH
31:W	5/1	School of Info Only: Intro	Lawrence Lessig, <i>The Law of the Horse: What Cyberlaw Might Teach</i> , 113 Harvard Law Review 501 (1999), available at http://cyber.law.harvard.edu/wg_home/uploads/199/1999-05.pdf . Jack Goldsmith and Timothy Wu, <i>Digital Borders, Legal Affairs</i> , Jan. 2006, available at http://www.legalaffairs.org/issues/January-February-2006/feature_goldsmith_janfeb06.msp? ; Copyright Alert System (CAS) readings. All on bSpace.	CH&DK
Th	5/9		Paper Due at 5 PM	