

Internet Law 2005: Syllabus

Brooklyn Law School

Professor Wendy Seltzer

Texts

Lawrence Lessig, [*Code and Other Laws of Cyberspace*](#) ("Code")

Other material online, follow the link below each week.

[Introduction](#)

[Course Information](#)

[Syllabus](#)

[Useful Links](#)

[Current Assignment](#)

Week 1: Introduction -- What is Internet Law?

- Lawrence Lessig, *Code and Other Laws of Cyberspace* ("Code"), [chapter 1](#)
- John Perry Barlow, [*A Declaration of the Independence of Cyberspace*](#)

As you read, compare these two authors' visions of the Internet with your own.
Think about what each means for legal regulation of the Net.

Week 2: Speech and Control

[Week 2 Readings HTML](#) or [PDF version](#)

Slides: [PPT](#) or [PDF](#) (these are the slides shown in class)

September 6, 2005

Required:

- *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) (excerpts below, full decision available at Findlaw
<<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=96-511>> but not required)
- CDT fact sheet on *CDT v. Pappert*, 337 F.Supp.2d 606 (E.D. Penn. 2004),

<<http://www.cdt.org/speech/pennwebblock/20040915highlights.pdf>>

- Sharon Eisner Gillett and Mitchell Kapor, *The Self-governing Internet: Coordination by Design*, <<http://ccs.mit.edu/papers/CCSWP197/CCSWP197.html>>
- *Code*, chapters 3-5

For further reading (optional):

- *Hobbes' Internet Timeline*, <<http://www.zakon.org/robert/internet/timeline/>>
- RFC 1958: Architectural Principles of the Internet, <<http://www.ietf.org/rfc/rfc1958.txt>>
- J.H. Saltzer, D.P. Reed and D.D. Clark, *End-to-End Arguments in System Design* (1981), <<http://web.mit.edu/Saltzer/www/publications/endtoend/endtoend.pdf>>
- Jonathan Zittrain, *Internet Points of Control*, 44 B.C.L.Rev. 653 (2003), <http://cyber.harvard.edu/works/lessig/what_things.pdf>
- Lawrence Lessig, *What Things Regulate Speech?* 38 Jurimetrics 629 (1998) <http://cyber.harvard.edu/works/lessig/what_things.pdf>

Week 3: Online Speech: Not enough or too much?

[Week 3 Readings](#) or [PDF version](#)

Slides: [PPT](#) or [PDF](#) (these are the slides shown in class)

September 13, 2005

- *Cubby, Inc. v. Compuserve Inc.*, 776 F.Supp. 135 (S.D.N.Y. 1991)
- *Stratton Oakmont, Inc. v. Prodigy Servs Co.*, 1995 N.Y. Misc. Lexis 229 (N.Y. Sup. Ct. May 24, 1995)
- CDA § 230, 47 USC § 230 (1996)
- *Zeran v. America Online*, 129 F.3d 327 (4th Cir. 1997)
- *Blumenthal v. Drudge*, 992 F.Supp. 44 (D.D.C. 1998)
- *Doe v. 2TheMart.com*, 140 F. Supp. 2d 1088 (W.D.Wash. 2001)
- *Code*, chapters 6-7

For further reading (optional):

- Lyrrisa Barnett Lidsky, *Silencing John Doe: Defamation & Discourse in Cyberspace*, 49 Duke L. J. 855 (2000) <<http://www.law.duke.edu/journals/dlj/articles/dlj49p855.htm>>
- EFF, Blogging Anonymously, <<http://www.eff.org/Privacy/Anonymity/blog->

[anonymously.php](#)>

Week 4: Copyright 1: Direct infringement, sampling, mash-ups

[Week 4 Readings](#) or [PDF version](#)

[Slides shown in class](#)

September 20, 2005

- *Playboy Enterprises v. Webbworld*, 991 F.Supp. 543 (N.D.Tex. 1997)
- *MAI Systems Corp. v. Peak Computer, Inc.*, 991 F.2d 511 (9th Cir. 1993)
- *Kelly v. Arriba Soft Corp.*, 336 F.3d 811 (9th Cir. 2003)
- *United States v. LaMacchia*, 871 F. Supp. 535 (D. Mass. 1994)
- *Creative Commons*, <<http://creativecommons.org/about/licenses/>>
- *The Grey Album / Grey Tuesday*, see <<http://www.greytuesday.org/>>
- *Code*, chapters 9-10

For further reading (optional):

- John Perry Barlow, *The Economy of Ideas*, *Wired*, July 1995, <http://www.wired.com/wired/archive/2.03/economy.ideas_pr.html>
- Jessica Litman, *The Exclusive Right to Read*, 13 *Cardozo Arts & Ent. L.J.* 29 (1994) <<http://www.law.wayne.edu/litman/papers/read.htm>>
- Jane Ginsburg, *From Having Copies to Experiencing Works: The Development of an Access Right in U.S. Copyright Law*, 50 *J. Copyr. Soc.* 113 (2003)

Week 5: Copyright 2: Music on the Net, peer-to-peer, and indirect infringement

[Week 5 Readings](#) or [PDF version](#)

[Slides shown in class](#)

September 27, 2005

- *Sony Corporation of America v. Universal City Studios, Inc.*, [464 US 417](#) (1984)
- *A&M Records v. Napster*, [239 F.3d 1004](#) (9th Cir. 2001)
- *Metro-Goldwyn-Mayer v. Grokster*, [No. 04-480](#), (U.S. June 27, 2005),

- [<http://www.eff.org/IP/P2P/MGM_v_Grokster/04-480.pdf>](http://www.eff.org/IP/P2P/MGM_v_Grokster/04-480.pdf)
- Complaint in *Capitol Records v. Does 1-250*, 04-CV-00472, [<http://www.eff.org/IP/P2P/RIAA_v_ThePeople/JohnDoe/20040121_capitol_complaint.pdf>](http://www.eff.org/IP/P2P/RIAA_v_ThePeople/JohnDoe/20040121_capitol_complaint.pdf)
- EFF, *A Better Way Forward, Voluntary Collective Licensing of Music File Sharing*, [<http://www.eff.org/share/?f=collective_lic_wp.html>](http://www.eff.org/share/?f=collective_lic_wp.html)

For further reading (optional):

- Mark Lemley & R. Anthony Reese, *Reducing Digital Copyright Infringement Without Restricting Innovation*, 56 Stan. L. Rev (2004), [<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=525662>](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=525662)
- William Fisher, *Promises to Keep* (2005)
- Peter Biddle, Paul England, Marcus Peinado, and Bryan Willman, *The Darknet and the Future of Content Distribution* (2002) [<http://crypto.stanford.edu/DRM2002/darknet5.doc>](http://crypto.stanford.edu/DRM2002/darknet5.doc)
- EFF, [The Customer Is Always Wrong: A User's Guide to DRM in Online Music](http://www.eff.org/~/media/eff/press/2004/04/040404_customer_is_always_wrong.pdf)

Week 6: Copyright 3: Safe Harbors and Chilling Effects

[Week 6 Readings](#) or [PDF version](#)

Slides: [PPT](#) or [PDF](#)

October 11, 2005

- *DMCA Safe Harbors*, 17 U.S.C. 512 (enacted 1998)
- *Religious Technology Center v. Netcom On-Line Comm. Servs., Inc.*, 907 F.Supp. 1361 (N.D. Cal. 1995)
- *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d 1082 (C.D. Cal. 2001)
- *ALS Scan, Inc. v. RemarQ Communities, Inc.*, 239 F.3d 619 (4th Cir. 2001)
- *Online Policy Group v. Diebold*, 337 F Supp 2d 1195 (N.D. Cal. 2004)
- Chilling Effects, <http://www.chillingeffects.org/>, see *Google DMCA Takedowns: A three-month view* <http://www.chillingeffects.org/weather.cgi?WeatherID=498>

For further reading (optional):

- EFF, *Unsafe Harbors*, [<http://www.eff.org/IP/P2P/20030926_unsafe_harbors.php>](http://www.eff.org/IP/P2P/20030926_unsafe_harbors.php)
- David Nimmer, *Repeat Infringers*
- Tim Wu, *Copyright's Communications Policy*, 103 Mich. L.Rev. 278 (2004)
- *Recording Indus. Ass'n of Am. v. Verizon Internet Servs.*, 351 F.3d 1229 (D.C. Cir.

2003)

Week 7: Copyright 4: Anticircumvention, Tech Mandates, and "Trusted" Systems

[Week 7 Readings](#) or [PDF version](#)
[Slides](#)

October 18, 2005

- *DMCA Anticircumvention*, 17 U.S.C. 1201
- *Universal v. Corley*, 273 F.3d. 429, (2d Cir. 2001)
- *Lexmark v. Static Control Components*, 387 F.3d 522 (6th Cir. 2005)
- Wendy Seltzer, *The Broadcast Flag: It's not just TV*, 57 Fed. Comm. L.J. 209 (2005), < <http://www.law.indiana.edu/fclj/pubs/v57/no2/Seltzer.pdf>>

For further reading (optional):

- Julie Cohen, *A Right to Read Anonymously: A Closer Look at "Copyright Management" In Cyberspace* 28 Conn. L. Rev 981 (1996), < <http://cyber.law.harvard.edu/property/alternative/Cohen.html>>
- Pam Samuelson, *Intellectual Property and the Digital Economy: Why the Anti-Circumvention Regulations Need to Be Revised*, BTLJ (1999), < http://www.sims.berkeley.edu/%7Eepam/papers/Samuelson_IP_dig_eco.htm>
- Fred von Lohmann, *Measuring the DMCA Against the Darknet*, 24 Loyola of Los Angeles L.Rev. 635 (2005) < http://www.eff.org/IP/DMCA/DMCA_against_the_darknet.pdf>
- EFF, *Unintended Consequences* < http://www.eff.org/IP/DMCA/unintended_consequences.php>
- Dean Marks and Bruce Turnbull, *Technical Protection Measures: The intersection of technology, law and commercial licenses*, 46 J. Copyright Soc'y U.S. 563 (1999), < http://www.wipo.org/documents/en/meetings/1999/wct_wppt/doc/imp99_3.doc>

Week 8: Trademark: Domain names and beyond

[Week 8 Readings](#) or [PDF Version](#)
[Slides](#)

October 25, 2005

- *Panavision International, L.P. v. Toeppen*, 141 F.3d 1316 (9th Cir. 1998)
- *People for the Ethical Treatment of Animals v. Doughney*, 263 F.3d 359, 364 (4th Cir. 2001)
- *Playboy Enterprises, Inc. v. Welles*, 279 F.3d 796 (9th Cir. 2002)
- *Lamparello v. Falwell*, -- F.3d -- (4th Cir., Aug. 24, 2005)
- *1-800-Contacts, Inc. v. WhenU.com, Inc.*, -- F.3d -- (2d. Cir., June 27, 2005)

For further reading (optional):

- Mark Lemley, *The Modern Lanham Act and the Death of Common Sense*, 108 Yale L.J. 1687 (1999).
- Jessica Litman, *Breakfast with Batman: The Public Interest in the Advertising Age*, 108 Yale L.J. 1717 (1999)

Week 9: Intellectual Property and Some Alternatives

[Week 9 Readings](#) or [Alternate PDF Version slides](#)

November 1, 2005

- *DVD Copy Control Assoc. v. Bunner*, 116 Cal. App. 4th 241, 10 Cal. Rptr. 3d 185, (Cal. Ct. App. 2004)
- *eBay, Inc. v. Bidder's Edge, Inc.* 100 F. Supp. 2d 1058 (ND Cal. 2000)
- *Intel Corp. v. Hamidi*, 30 Cal. 4th 1342; 71 P.3d 296; 1 Cal. Rptr. 3d 32 (Cal. 2003)

Additional reading

- Pamela Samuelson and Suzanne Scotchmer, *The Law and Economics of Reverse Engineering*, 111 Yale L.J. 1575 (2002), <<http://socrates.berkeley.edu/~scotch/re.pdf>>
- Dan L. Burk, *The Trouble With Trespass*, 3 J. SMALL & EMERGING BUS. L. 1 (1998) <<http://www.isc.umn.edu/research/papers/trespass-ed2.pdf>>
- I. Trotter Hardy, *The Ancient Doctrine of Trespass to Websites*, 1996 J. Online L. art. 7 <http://www.wm.edu/law/publications/jol/95_96/hardy.html>

Week 10: Privacy 1: Privacy from commerce

[Week 10 Readings](#) or [Alternate PDF version](#)

[slides](#)

November 8, 2005

Privacy 1: Privacy from commerce

- *In re GeoCities*, Federal Trade Commission (1999)
- *In re DoubleClick Inc. Privacy Litig.*, 154 F. Supp. 2d 497 (S.D.N.Y. 2001)
- Browse the TRUSTe website, <<http://www.truste.org/>>
- Jeri Clausing, *Privacy Watchdog Declines to Pursue Microsoft, a Backer*, *N.Y. Times*, March 22, 1999, <<http://www.nytimes.com/library/tech/99/03/cyber/articles/23privacy.html>>
- Joseph Reagle and Lorrie Faith Cranor, *The Platform for Privacy Preferences*, <<http://www.w3.org/TR/NOTE-P3P-CACM/>>
- *Code*, chapter 11

For further reading (optional):

- Federal Trade Commission, *Privacy Online: Fair Information Practices in the Electronic Marketplace: A Federal Trade Commission Report to Congress* (May 2000), <<http://www.ftc.gov/reports/privacy2000/privacy2000.pdf>>
- Jerry Kang, *Information Privacy in Cyberspace Transactions*, 50 *Stan. L. Rev.* 1193 (1998)
- James Boyle, *Foucault in Cyberspace: Surveillance, Sovereignty, and Hard-Wired Censors* (1997), <<http://www.law.duke.edu/boylesite/foucault.htm>>
- Joel R. Reidenberg, *Lex Informatica: The Formulation of Information Policy Rules Through Technology*, 76 *Tex.L.Rev.* 553 (1998), <http://reidenberg.home.sprynet.com/lex_informatica.pdf>

Week 11: Privacy 2: Privacy from government

[Week 11 Readings](#) or [Alternate PDF Version](#)
[slides](#)

November 15, 2005

- Electronic Communications Privacy Act, as amended by USA PATRIOT Act (read the summaries; the full text of the statutes is included at the end for your convenience, but is not required)
- *Katz v. United States*, 389 U.S. 347 (1967); *Smith v. Maryland*, 442 U.S. 735 (1979); *Kyllo v. United States*, 533 U.S. 27 (2001)
- *Steve Jackson Games, Inc. v. U.S. Secret Service*, 36 F.3d 457 (5th Cir. 1994)

- *Doe v. Ashcroft*, 334 F. Supp. 2d 471 (S.D.N.Y. 2004)
- Barton Gellman, "The FBI's Secret Scrutiny," Washington Post, Nov. 6, 2005
<http://www.washingtonpost.com/wp-dyn/content/article/2005/11/05/AR2005110501366_pf.html>

Optional further reading

- Deirdre Mulligan, *Reasonable Expectations in Electronic Communications: A Critical Perspective on the Electronic Communications Privacy Act*, 72 Geo. Wash.L. Rev. 1557, 1565 (2004)
- Susan Freiwald, *Online Surveillance: Remembering the Lessons of the Wiretap Act*, 56 Ala. L. Rev. 9, 46-52 (2004)
- Orin S. Kerr, *Internet Surveillance Law after the USA PATRIOT Act: The Big Brother that Isn't*, 2003 NW. U. L. Rev. 607, 616-18 (2003)

Week 12: Licensing, Open Source and Otherwise

[Week 12 Readings](#) or [Alternate PDF version](#)
[slides](#)

November 22, 2005

- Shrinkwrap: *Vault Corp. v. Quaid Software, Ltd.*, 847 F.2d 255 (5th Cir. 1988)
- *ProCD v. Zeidenberg*, 86 F.3d 1447 (7th Cir. 1996)
- Browsewrap: *Specht v. Netscape*, 306 F.3d 17 (2d Cir. 2001)
- Free Software: GNU General Public License (GPL)
- Creative Commons: Commons Deed and Legal Code to Attribution-ShareAlike 2.5
- *Code*, chapter 8

For further reading (optional):

- Yochai Benkler, *Coase's Penguin, or Linux and the Nature of the Firm*, 112 Yale L.J. (2002)
- Jessica Litman, *Sharing and Stealing*, 26 Comm/Ent 1 (2004)
- Mark Lemley, *Beyond Preemption: The Federal Law and Policy of Intellectual Property Licensing*, 87 Cal. L.Rev. 111 (1999)

Week 13: Cybercrime and Other Pests

[Week 13 Readings](#) or [Alternate PDF version](#)
[slides](#)

November 29, 2005

Cybercrime and Other Pests

- Computer Fraud and Abuse Act, 18 U.S.C. § 1030
- *U.S. v. Morris*, 928 F.2d 504 (1991)
- *EF Cultural Travel BV v. Zefer Corp.*, 318 F.3d 58 (1st Cir. 2003)
- CAN-SPAM, S.877, 108th Congress,
<<http://www.spamlaws.com/federal/108s877.shtml>>
- MAPS, *Introduction to the Realtime Blackhole List (RBL) servers*, <http://www.mail-abuse.com/wp_introrbl.html>
- Yahoo!, DomainKeys, <<http://antispam.yahoo.com/domainkeys>>
- *Code*, chapters 15-17, appendix

For further reading (optional):

- David E. Sorkin, *Technical and Legal Approaches to Unsolicited Electronic Mail*, 35 U.S.F. L. Rev. 325 (2001), <<http://www.spamlaws.com/articles/usf.html>>
- David Johnson, Susan Crawford, and John Palfrey, *The Accountable Net: Peer Production of Internet Governance*, 9 Va. J.L. & Tech. 9 (2004)
<<http://cyber.law.harvard.edu/home/uploads/336/AccountableInternet.pdf>>
- Electronic Frontier Foundation, *Noncommercial Email Lists: Collateral Damage in the Fight Against Spam*, <<http://www.eff.org/wp/?f=SpamCollateralDamage.html>>

Week 14: Conclusion: Counseling the Internet Client

No additional reading.

Last updated: December 2005 (final)