

# Syllabus

## Law of Cyberspace – Fall 2007

### Prof. Post

#### Introduction

With the emergence of the global communications network, we can access, store, and transmit vast amounts of digital information, at absurdly low cost, and without apparent regard for geographic boundaries. This digital revolution raises fundamental questions about the content, and application, of existing legal rules to novel phenomena and transactions. This course explores some of the legal and policy issues that arise as more and more conduct migrates to the network, including questions about sovereignty and jurisdiction, the regulation of online “speech,” and the control over information on the network (including questions about “privacy” interests that may attach to that information, and the ownership and protection of intellectual property rights in it). We will not, however, structure our examination of these issues around the traditional legal doctrinal categories (*e.g.*, Personal Jurisdiction in Cyberspace; the First Amendment in Cyberspace; Copyright Law in Cyberspace; etc.), but rather around a number of broader conceptual themes that cut across specific areas of doctrine. This will, I hope, enable us both to explore some jurisprudential and policy questions that apply broadly to a wide range of legal questions arising on the network, and to discuss the ways that the study of “cyberlaw” forces us to question and to re-examine some of the premises that underlie our thinking about the law, and the way that the law operates, in “realspace.”

#### Course Logistics

Class Meetings. The class meets Mondays 4:00 – 5:50, in Room \_\_\_\_\_

#### Contact

Phone extension: 4539  
Email: David.Post@temple.edu  
Office Hours: Tuesday 2 – 4

Feel free to contact me by email if you’d like to make other arrangements to schedule a meeting, or to discuss class materials, or for any other reason, at any time. (Please put the words “CYBERLAW COURSE” in the subject line of your email so that I can more easily find it and respond to it).

#### Papers

You may take this class for Serial Paper or Research Paper writing credit. You must let me know (via email, please) by our second class (September 10) which option you are taking.

Whichever option you take, please be sure to read my “Writing Guidelines,” available at <http://www.temple.edu/lawschool/dpost/Guidelines.pdf>. It is always difficult, in a class of this size, for me to give your writing as much individualized attention as I’d like. Most of what I know about writing I’ve put in those Guidelines, so please consider them part of the assigned reading for this class.

**Serial Paper option.** If you are taking this class for “serial paper” credit, you will be responsible for three papers, chosen from among the following list:

**Serial Paper 1.** A client memorandum (3000 words maximum, not including footnotes). Choose one of the following:

(a) Your client is planning to develop a web site at which registered users, for a fee, can order cellphone ringtones, consisting of snippets of well-known popular songs, and have those

ringtones delivered directly to the user's cellphone. The client would like a summary of its obligations under the Copyright Act for these activities.

(b) Your client is Google, Inc. It has asked for a memorandum summarizing the implications of the Supreme Court's *Brand X* decision for the regulation of Internet commerce.

(c) Your client is the Philadelphia law firm of Dickinson, Whitman, and Larkin, PC. It has asked for a memorandum on the extent to which it can monitor incoming and outgoing employee emails (including attorney emails) for the purpose of determining whether employees are adhering to or violating the firm's "Internet Usage Policy"; the firm's policy prohibits, *inter alia*, the use of the firm's Internet connection for "predominantly personal communications," "gambling or game-playing," "viewing any material that could be deemed to be pornographic or degrading to women," and for "unlawful activities of any kind".

(d) Your client is Comcast, Inc. It has asked for a memorandum summarizing the current state of federal regulation of VOIP (voice over IP) services.

(e) Your client distributes TorrentBit, a new peer-to-peer filesharing program. It has asked for a memorandum on the new "Grokster" standard for liability, and for advice on how it should conduct its business to minimize the risk of liability for copyright infringement under that standard.

Serial Paper 2. A research paper (3000 words maximum, not including footnotes) on one of the following topics:

(a) What are the competing proposals for "Internet governance" that have surfaced at the UN's World Summit on the Information Society?

(b) What rules govern the use and disclosure of geographic location information regarding individuals?

(c) Should ISPs and/or the operators of virtual world environments have any minimum set of duties to subscribers in connection with the revocation of "screennames" or other identifiers?

(d) Has ICANN's Uniform Dispute Resolution Procedure been a success? A failure? A little of both?

Serial Paper 3. An Op-Ed article, for publication in the Philadelphia Inquirer (800 words maximum, not including footnotes) on one of the following:

(a) Why the US should do away with (or, alternatively, should strengthen) its regulation of Internet gambling.

(b) Why Congress should extend (or, alternatively, eliminate) the Internet Sales Tax Exemption.

(c) Why ICANN should have established (or, alternatively, why it decided correctly not to establish) an .xxx top-level domain.

Research Paper option. 10,000 words, maximum (not including footnotes). Choose one of the following:

1. A memorandum of points an authorities arguing for reversal of the court's judgment in one of the following cases:

*Hageseth v People* (CA App 2007)  
*Recording Industry Ass'n of America v. Verizon Internet Services*, 351 F.3d 1229 (DC Cir 2003)

*Universal City Studios v. Remeirdes*, 111 F.Supp 294 (SDNY 2000)  
*Barrett v. Rosenthal*, 146 P.3d 510, 40 Cal.4th 33 (2006)  
*CDT v. Pappert*, 337 F. Supp. 2d 606 (ED Pa. 2004)  
*Intel v. Hamidi*, 71 P.3d 296, 30 Cal. 4th 1342 (2003).  
*Bragg v. Linden*, 487 F.Supp.2d 593 (ED Pa. 2007)

2. How do ECPA and the USA Patriot Act regulate the interception of electronic communications, government access to those communications, and government access to ISP records involving subscriber activity?

3. What (if anything) can Congress do, consistent with Constitutional limitations, to regulate the availability of pornographic material distributed over the web or by email?

4. You have been invited to a symposium at which Judge Easterbrook will present an updated version of his paper on the "Law of the Horse," and you have been asked to submit an article for that symposium with your reflections on Easterbrook's article.

5. When (if ever) should local governments defer to rules established by private parties for conduct in online spaces?

6. What conditions does ICANN impose on the creation of new Top-Level Domains? Would someone proposing a new TLD that was rejected by ICANN have a cause of action against ICANN under the antitrust laws?

7. Does the creator of an "avatar" in a virtual world have the right to sell or give that avatar to another person? Can the operator of the virtual world do so?

8. Analyze the Cybercrime Treaty and make proposals for enhancement or regulation of law enforcement activities related to cybercrime.

**Logistics.** Papers are due October 1 (Paper 1), November 5 (Paper 2), and December 10 ((Paper 3). Those of you who have chosen the research paper option should turn in drafts of your work on those dates.

Please deliver papers to me in hard-copy and via email; for the latter, please label your file as follows:

FIRSTNAME-LASTNAME-cyberlaw-DATE.doc

(e.g., Mary Smith's file for Paper #1 would have the filename "Mary-Smith-cyberlaw-10012007.doc").

If you have the capability to save your document in PDF format, please do so and send it to me in that format; otherwise, you can use a word processing (MS Word or Wordperfect) file.

## Readings

All readings are from Bellia, Berman & Post, *Cyberlaw: Problems of Policy and Jurisprudence in the Information Age (THIRD Edition)* (West, 2007), except as indicated.

### **Class 1, Aug 27: Introduction to the Course; Law in Cyberspace, and the Law of the Horse**

Casebook, Chapter 1.

An understanding of how the Internet works will be very helpful to you as we move through the course. In addition to the material in the readings for today's class, there are many excellent resources for obtaining more information, at different levels of technical detail; you might consider browsing through some of these references. The Internet Society website has a number of useful documents, including:

A [Brief History of the Internet](http://www.isoc.org/internet/history/brief.shtml) <<http://www.isoc.org/internet/history/brief.shtml>> (this is written by a number of the early Internet pioneers -- Barry M. Leiner, Vinton G. Cerf, David D. Clark, Robert E. Kahn, Leonard Kleinrock, Daniel C. Lynch, Jon Postel, Larry G. Roberts, Stephen Wolff -- and is quite readable and useful); and

[What is the Internet?](http://www.isoc.org/internet/) <<http://www.isoc.org/internet/>>

Other good resources include:

The Complete "Findings of Fact" in [ACLU v. Reno I, 929 F.Supp. 824 \(E.D. Pa. 1996\)](http://www.eff.org/Censorship/Internet_censorship_bills/HTML/960612_aclu_v_reno_decision.html). This was one of the first Internet-related case to reach the federal courts, and the court took the opportunity to spell out, in considerable detail, many of the architectural features of the Internet.

Richard Griffiths, [History of the Internet, the Internet for Historians](http://www.let.leidenuniv.nl/history/ivh/frame_theorie.html) <[http://www.let.leidenuniv.nl/history/ivh/frame\\_theorie.html](http://www.let.leidenuniv.nl/history/ivh/frame_theorie.html)>

Two outstanding books on the early history of the Internet:

Katie Hafner & Matthew Lyon, *Where Wizards Stay Up Late* (1998) [which also has a nice website at <http://www.simonsays.com/titles/0684812010/>]

Janet Abbate, *Inventing the Internet* (1999)

### **Class 2, Sept 10: Metaphor and Analogy**

Casebook, Chap 2

### **Class 3, Sept. 17: Geography & Sovereignty, I**

Casebook, Chap 3A and 3B

### **Class 4, Sept 24: Geography & Sovereignty, II**

Casebook, Chap 3C & 3D

### **Class 5, Oct. 1: Geography & Sovereignty, III**

Casebook, Chap. 3F

### **Class 6, Oct. 8: Legal and Technological Regulation**

Casebook, Chap. 4A & 4B

### **Class 7, Oct 15: Legal and Technological Regulation, II**

Casebook, Chap. 4C & 4D

**Class 8, Oct. 22: Public and Private Regulation I**

Casebook, Chap. 5A & 5B

**Class 9, Oct. 29: Public and Private Regulation, II**

Casebook, Chap 5C

**Class 10, Nov. 5: Regulating Speech**

Casebook, Chap. 6

**Class 11, Nov. 12: Intermediaries, I**

Casebook, Chap. 7A

**Class 12, Nov. 19: Intermediaries, II; Surveillance**

Casebook, Chap. 7B and 8B

**Class 13, Nov. 26: Information Enclosure**

Casebook, Chap. 9

**Class 14, Dec. 3: Cultural Change**

Casebook, Chap. 10