

# Syllabus

## Law of Cyberspace – Spring 2011

### 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 [TBA]

#### Contact

Phone extension: 4539  
Email: David.Post@temple.edu  
Office Hours: Monday 3-4, Tuesday 10-12, or by appointment

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

There is no exam in this course; your final grade will be based entirely on your research papers (and drafts)

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. They’re available on the course Blackboard page and at

<http://www.temple.edu/lawschool/dpost/Guidelines.pdf>.

Choose one of the following topics – please let me know by our third class (Jan 24<sup>th</sup>) which of the topics you have chosen.

1. A memorandum of points and authorities arguing that the provisions for the assertion of *in rem* jurisdiction and the seizure of domain names in the ACPA (Anti-Cybersquatting Protection Act, now codified at 15 USC §1125(d), and the proposed Combating Online Infringement Counterfeits Act (COICA) are unconstitutional violations of the Due Process Clause.

2. Assume that Temple University President Ann Weaver Hart has directed the Temple Information Technology Department to develop and implement a policy of randomly intercepting and inspecting all (a) electronic mail sent through the Temple mail servers and (b) requests for web pages, by students, faculty, and staff, to determine whether any of its users are engaging in unlawful activity (including copyright infringement and transmission of child pornography). Temple General Counsel has asked you for a memorandum on the legality of this project under State and Federal Law.

Logistics. Your first drafts are due February 7<sup>th</sup> (if your last name begins with A – L) or February 14<sup>th</sup> (all others). Your second drafts are due March 21<sup>st</sup> (last name A – L), or March 28<sup>th</sup> (M – Z). Please note: “draft” is not a euphemism for “sloppy, unedited, un-proofed work slapped together at the last minute.” A good draft should, at a minimum, show the basic structure of the argument you are going to be making, with as much supporting analysis/argument as you can muster. There can be – and inevitably will be – large gaps in that analysis; that’s what makes it a draft. But all of the usual rules regarding submission of written work apply, and whatever you do express in a draft should be expressed as well as you can express it.

Final drafts are due from all students on Friday, May 6.

Please deliver papers to me in hard-copy and via email. If at all possible, I would prefer that you use Microsoft Word and/or Adobe PDF as the file format. Please label your file as follows:

FIRSTNAME-LASTNAME-cyberlaw-DATE.pdf [PDF file] or  
FIRSTNAME-LASTNAME-cyberlaw-DATE.doc [Microsoft Word file]

(*e.g.*, Jackie Smith’s Word file for Draft #1 would have the filename “Jackie-Smith-cyberlaw-10012007.doc”).

#### Readings

All readings are from Bellia, Berman, Frischmann & Post, *Cyberlaw: Problems of Policy and Jurisprudence in the Information Age (FOURTH Edition)* (West, 2011), except as indicated. We may end up altering this schedule of classes in response to “breaking issues” (of which there are likely to be many).

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

Casebook, Chapter 1

#### Additional Reading (not required)

Some basic understanding of how the Internet actually works is indispensable for understanding the legal issues raised by Internet activities. In addition to the required reading in Chapter 1(C) of the Casebook (“Internet Basics”), there are many excellent resources for obtaining more information, at different levels of technical detail; you might find it useful to browse through some of these references, either now or as we proceed during the semester.

1. Much of Part One of my book *In Search of Jefferson’s Moose: Notes on the State of Cyberspace* consists of a detailed description of some of the basic architectural features of the Net. *See, esp.*, Chapters 3, 4, and 5.
2. 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/>>

3. 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). [http://www.eff.org/Censorship/Internet\\_censorship\\_bills/HTML/960612\\_aclu\\_v\\_reno\\_decision.html](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)>

4. 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)

#### **NO CLASS MONDAY JANUARY 17**

#### **Class 2 – Jan. 24: Metaphor and Analogy**

Casebook, Chap 2

#### **Class 3 – Jan 31: Who Regulates? Geography & Sovereignty, I**

Casebook, Chapter 3(A) and 3 (B) (pp. 75 – 129)

#### **Class 4 – Feb 7: Who Regulates? Geography & Sovereignty, II**

Casebook, Chapter 3(C) and 3(D) (pp. 129 – 165)

#### **Class 5 – Feb 14: Who Regulates? Private vs. Public Regulation**

Casebook, Chapter 4(A) (pp. 165 – 202), 4(B)(3) (pp. 244-263)

#### **Class 6 – Feb 21: Who Regulates? Part 2**

Casebook, Chapter 4, Concluding Case Study (ICANN)

#### **Class 7 – Feb 28: Review; No New Reading**

#### **Classes 8&9 – March 14 &21: Intermediary Liability**

Casebook, Chap 6(A), 6(B) (pp. 393 – 482)  
Chap. 6 concluding case study (pp. 495 – 519)

#### **Class 10 &11– March 28 & April 4: Speech**

Casebook, Chap. 7

#### **Class 12 – April 11 : Information Enclosure**

Casebook, Chap 9 (pp 707 – 785)

#### **Class 13 – April 18: Information Enclosure, Cont’d**

Casebook, Chap 9 Concluding Case Study (Google Books)