



Cyberspace Law (Law 793)

Eric Goldman

Fall 2009

1. **SESSIONS.** The course meets Mondays and Wednesdays 10:30-11:45 am from August 17 to November 25, except September 7 (Labor Day), September 28 (Yom Kippur) and October 12 (Academic Recess).

2. **GRADING.**

Attendance

In-class material and discussions are crucial to this course, so I expect you to attend every class. However, because our lives are unpredictable, you have five “free passes” for unexcused absences (no need to notify me in advance). I will excuse absences only for very good cause. Your sixth unexcused absence may trigger a significant penalty to your final course grade. At my option, I may drop you from the course or give you an F upon a seventh unexcused absence.

Grading Option A: 100% Final Exam

If you choose this option (the default), except for any adjustments due to unexcused absences, the final exam will constitute 100% of the course grade. The final exam will be a take-home exam, probably consisting of 2-3 essay questions with a maximum word count. My current plan is to make the exam available November 30 at 8:30 am and due the same day at 4:30 pm. If you have any issues with that timing, please inform me immediately. I do not accept late exams; **you will fail the course if your exam is late, even by 1 minute.**

I strongly encourage you to review my past exams, which you can find (along with sample answers) at [my website](#). Note the law may have changed in the interim.

Grading Option B: 80% Final Exam; 20% Wiki Entry

Instead of the final exam counting as 100% of the course grade (but still subject to adjustments for unexcused absences), you can choose to have your final exam count for 80% and the remaining 20% of your grade based on a wiki entry that meets the following specifications:

- The entry can be on any Cyberlaw topic or case that we mutually agree upon. Ideally it will be an encyclopedic entry on an important Cyberlaw case or doctrine that is not currently covered in Wikipedia or is just a stub entry.
- A typical entry might be approximately 600 words, but the entry should be an appropriate length for its topic.

- You can create a new entry or you can substantially improve an existing entry.
- I expect your entry to be thoroughly researched. I also expect the entry will include links to relevant source materials and other materials of interest.
- The entry should conform to the editorial standards of the wiki you target for publication. If you target Wikipedia, please review [Wikipedia's five pillars](#) and [these instructions](#).

I will grade your entry using the same 5 point scale I use to grade exams. My grading will be based, in part, on your entry's conformance to the style and norms of your target wiki. After I have approved the final version, I expect you to publish your wiki entry. Possible target wikis for publications include Wikipedia, the [IT Law Wiki](#) and the EFF's [Internet Law Treatise](#). Note: due to the nature of wikis, publishing your entry doesn't mean that it will remain published or unmodified! When you submit your entry to a wiki, you may be required to disclaim or license your copyright interests in the entry.

I am willing to consider a proposal for you to collaborate with one of your peers. I will assign a single grade to your collective output, and I expect the topic or case you tackle to require at least twice the effort of a topic or case your peers are undertaking solo.

If you choose Option B, the deadlines for your wiki entry:

- September 9, 10:30 am: latest time to elect Option B by sending me an email saying you choose option B. After this time, your election becomes irrevocable.
- September 30, 10:30 am: by this time, we need to have agreed on your topic/case. I may reject your proposal for any reason, so I anticipate that we will discuss your proposal well before this date.
- October 21, 10:30 am: latest time to submit a first draft of your entry. You can submit as many drafts as you want, and I encourage you not to wait to submit your draft for my review.
- November 18, 10:30 am: final draft due.
- December 4, noon: latest time to publish your final draft at your targeted wiki.

Important note: I really hate missed deadlines. Meeting deadlines is a daily responsibility of professional service providers, and an attorney's failure to meet deadlines can have draconian consequences for the attorney and his/her client. As a result, you will irritate me if you miss any of these deadlines, which could have deleterious effects on your entry's grade. So, please respect the deadlines!

- 3. READER.** The course reader is the only required reading (except for any materials I distribute during the semester).
- 4. OFFICE HOURS.** I can schedule a time to speak with you at your convenience. Please email me to make an appointment. I'm also happy to talk by email.
- 5. COURSE RECORDINGS.** I plan to record class lectures using a digital voice recorder, which may also pick up your in-class contributions. If you have any concerns about this, please

let me know. You can download lecture recordings from [iTunesU](#) (iTunes client software required).

6. READINGS.

What is Cyberspace? Who Regulates It?

ACLU v. Reno (CDA I District Ct. Facts Only)	Page 6
Noah v. AOL (E.D. Va.)	22
Geolocation: Core To The Local Space And Key To Click-Fraud Detection	33

Optional: if you'd like to know more about the Internet's technical operations, you might check out the [Animated Internet](#) website.

Jurisdiction

Toys 'R' Us v. Step Two (3d Cir.)	40
---	----

Contracts

Specht v. Netscape Communications (2d Cir.)	54
Register.com v. Verio (2d Cir.) (except Trespass to Chattels Section)	88
Harris v. Blockbuster	109

Trespass/CFAA

18 USC §1030	115
California Penal Code §502	121
Trespass to Chattels Chart	126
Intel v. Hamidi (Cal. Sup. Ct.)	127
Register.com v. Verio (Trespass to Chattels Section)	107

Copyright

Copyright Office Circular 1	168
Fair Use Cheat Sheet	175
Cartoon Network v. CSC (2d Cir.)	176

Subtopic: File Sharing

17 USC §506(a)	203
BMG v. Gonzalez (7th Cir.)	204
MGM Studios v. Grokster (Sup. Ct.)	212

Subtopic: Secondary Liability

17 USC §512	236
-------------------	-----

Perfect 10 v. Amazon (9th Cir. as amended)	243
Io v. Veoh	286

Review

Ticketmaster v. RMG	318
Parker v. Yahoo	346

Trademarks and Domain Names

Trademark FAQs	362
Helpful Hints to Knowing Your Trademark Terms	364
15 USC §§1125 & 1129 (Infringement, Dilution and ACPA)	367
15 USC §1114 (Trademark Safe Harbors).....	374
Domain Name Dispute Resolution Policy and rules	378

Subtopic: Domain Names and Metatags

Lamparello v. Falwell (4th Cir.)	397
Promatek v. Equitrac (7th Cir.) Original Order and Revision	416

Subtopic: Search Engines

Google Trademark Policy	426
Keyword Advertising Law slides	429
Hearts on Fire v. Blue Nile	438

Pornography

Helpful Hints to Knowing Your Porn Terms	461
Reno v. ACLU (Sup. Ct. 1997)	462
Ashcroft v. ACLU (Sup. Ct. 2004)	481

Defamation and Information Torts

47 USC §230 (Immunization for Interactive Computer Services)	513
Zeran v. America Online (4th Cir.)	516
Fair Housing Council v. Roommates.com (9th Cir. en banc)	529

Privacy

16 CFR Part 312 (Regulations Implementing COPPA)	581
In re. Pharmatruk (1st Cir.)	587

Spam

Where’s the Beef? Dissecting Spam’s Purported Harms	615
CAN-SPAM Act of 2003	630
16 CFR Part 316 (CAN-SPAM implementing regulations)	651

MySpace v. TheGlobe.com	657
Omega World Travel v. Mummagraphics (4th Cir.)	668

Blogs and Social Networking Sites

The Third Wave of Internet Exceptionalism	685
Social Networking Sites and Blogs presentation	687
Doe v. MySpace (5th Cir.)	692
Moreno v. Hanford Sentinel (Cal. App. Ct.)	705

7. CONTACT INFORMATION.

Eric Goldman
 Santa Clara University School of Law
 500 El Camino Real, Bannan 200K
 Santa Clara, CA 95053
 Phone: 408-554-4369
 Email: egoldman@gmail.com

In all emails to me related to this course, please put the word “cyberlaw” in the subject line to avoid unintentional deletion as spam.

If you want to see some of the issues I’m tracking, feel free to read [my blog](#) or follow me at [Twitter](#). More course-related materials, including an electronic copy of this syllabus, are available at [my personal website](#).