

Cybersecurity & Cyberlaw – Spring 2024

Tuesday / Thursday, 10:30 – 11:55AM	Room: Holland 285C	Professor Derek Bambauer
Course: LAW 6930 Class: 19427	Credits: 3	Office Hours: Tuesday & Thursday, 1-2PM, and by appointment

Last updated: 30 December 2023

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Course Description

Welcome to Cybersecurity & Cyberlaw! In this course, we will study the legal, technical, economic, and social aspects of Internet regulation, with a particular focus on information security. We will use an interdisciplinary approach designed, in part, to train lawyers to think more like engineers (and vice versa). The course will cover the technical foundations of Internet-based communications, including networking principles and the systemic challenges of cybersecurity; the legal concepts deployed in Internet law and policy, with particular emphasis on the New Chicago School of regulatory modalities; the issue of Internet exceptionalism; and current controversies such as network neutrality, software security liability, and algorithmic / artificial intelligence governance. The class does not assume any prior exposure to Internet law or to the technologies that undergird it.

Contact Information

Professor Bambauer can be reached by e-mail (bambauer@law.ufl.edu), by telephone (352.273.0957), or in Holland Hall 326. The best way to reach me is via e-mail; I infrequently check voice mail.

Professor Bambauer's office hours are Tuesday & Thursday from 1-2PM; you are welcome (and encouraged!) to stop by.

I am also available by appointment, and am happy to get together over coffee / tea / lunch, in real space or via Zoom, to discuss tech law, jobs, the obvious superiority of the Boston Red Sox (except this year), or anything else of interest. You can also follow me on Twitter/X (mostly retweets) [@dbambauer](#), for as long as that platform survives.

Logistics

- **Materials** – There are two required textbooks for this class:

- Derek E. Bambauer, Justin (Gus) Hurwitz, David Thaw, & Charlotte Tschider, [Cybersecurity: An Interdisciplinary Problem](#) (2021)
- Eric Goldman, [Internet Law: Cases and Materials](#) (2023 ed.)

Any additional materials for this course are linked from this syllabus or posted to the course Canvas site.

- **Course Meeting Times** – The class will meet live on Tuesdays and Thursdays, from 10:30AM – 11:55AM, in Holland Hall 285C. These sessions will be recorded automatically. I give blanket permission for any student in this class to access these recordings at any time. In addition, if you would like me to record a class via Zoom and make it available on Canvas, please send me an e-mail, preferably at least 24 hours in advance of the class. **In addition**, there will be unscheduled assignments, group activities, and asynchronous video lectures. You are responsible for completing these course components by the deadlines indicated.
- **Communication** - I will communicate with the class via e-mail and via the course Canvas site. Please monitor your e-mail account, sign up for the course Canvas site, and check the Canvas site regularly.
- **Assignments** - Please see the syllabus below for reading assignments. You are expected to have read and prepared the materials assigned for each class meeting. Please note carefully the page numbers and instructions; often, you will only need to read part of a case or section.

The syllabus will undoubtedly change; please check Canvas regularly for updates and note the “Last Updated” date at the top of the syllabus. You are responsible for reading the materials closely, and for posing questions about anything you do not understand.

- **Helpful Resources** – You should not need any additional resources beyond the required materials. However, if you would like more information on patent law, I recommend:
 - Eric Goldman, [Technology & Marketing Law Blog](#)
 - [Krebs on Security](#)
 - Hal Abelson, Ken Ledeen, and Harry Lewis, [Blown to Bits](#).
 - Lawrence Lessig, *Code Version 2.0*, available in [print](#), [Kindle](#), or [on-line](#).
 - John R. Levine, Carol Baroudi, and Margaret Levine Young, [The Internet for Dummies](#). This is a useful primer on the Internet's technical underpinnings,

written for a non-technical audience.

- [Lawfare](#)

Policies

- **Attendance** - Regular, punctual attendance is required under the College of Law and American Bar Association rules. You are responsible for ensuring that you are not recorded as absent if you arrive late. If you fail to meet the attendance requirement, you may be dropped from the course. The law school's policy on attendance can be found [here](#).

If you face special circumstances that require you to arrive late, leave early, or miss class sessions, please contact me so we can discuss how best to manage the situation. In particular, if you face an extended absence, contact me so I can help you stay current on the material.

- If you feel sick or may have been in contact with someone who is infectious, please stay home and contact me so you can participate by Zoom. Except for seeking medical care, avoid contact with others and do not travel.
 - Please notify me if you will miss a scheduled course component. All course sessions are recorded so that you can access material that you miss, or review course content.
- **Professionalism** - Please be professional while attending class and while participating in assignments outside class (for example, blog discussions and e-mail exchanges). This includes treating other students and faculty courteously, being prepared for class, ensuring that you do not distract other students, and engaging the material as best you are able. In particular, I ask that you try to curb electronic distractions: turn cellular phones **off** whenever possible, avoid playing computer games, and do not use communication tools such as instant messaging or e-mail during class time. In return, I commit to treat you with respect and professionalism, including by beginning and ending class on time.
- **Blogging / Podcasting** - You are welcome to blog and podcast about class discussions and assignments, with this proviso: you may not identify any of your classmates by name (for example, "Jane Doe said that everything in this class is a security violation") without that person's permission. This policy seeks to ensure frank, enthusiastic discussion in class without concern that an inadvertent error may be preserved forever by Google.
- **Special Circumstances** - If you face special circumstances that could affect your participation in class or your ability to prepare adequately (such as a life event, a disability, repetitive strain injury (RSI), or stage fright), please contact me. There are resources at the College of Law and beyond that we can enlist to assist you. Law school can be a stressful experience; I (along with the rest of the faculty and administration) am here to help you manage its challenges. This applies outside of class as well: if you

need help or are facing a problem, please reach out. There are a lot of resources here to assist you. In particular, I would like you to be aware of:

- [Wellness at UF Law](#)
 - [U Matter, We Care](#) – contact at <umatter@ufl.edu> or 352.392.1575 (24 hours)
 - [Counseling and Wellness Center](#) – <UFLawCares@law.ufl.edu> or 352.392.1575
 - [Student Health Care Center](#) – 352.392.1161 (24 hours)
 - [University of Florida Shands Emergency Room / Trauma Center](#) – 352.733.0111; the ER is at 1515 SW Archer Road, Gainesville, FL 32608.
- **Out-of-Class Requirements** – American Bar Association Standard 310 requires devoting 2 hours of preparation outside (before) class for each hour of classroom instruction. This class has approximately three hours of classroom instruction per week; thus, you should spend roughly six hours per week outside class reading the assigned materials, preparing practice problems, formulating questions, and so forth.
 - **Feedback:** At several points during the course, I will ask you for feedback in writing / electronically about how the course is progressing and how it can be improved. This feedback is anonymous, and it is extremely important to me. It is also a **required component** of the class. I will read and carefully consider everything that the class shares with me; then, I will summarize it at the start of the next session and also describe how I will respond based upon it.
 - **College of Law Standard Syllabus Policies** - Information about other College of Law policies, including compliance with the University Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link: <https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

Grading

Your grade for the class will be based upon **3 components**: class feedback, a midterm exercise, and the final examination.

Deadlines are vitally important to technology lawyers. Failing to meet a deadline can mean that your client will be treated as having abandoned a trademark application (potentially forfeiting rights to a competitor), or as having waived objections or counterarguments in litigation. I may grant deadline extensions for these evaluations in my discretion, on a case by case basis, **if you ask for the extension in advance**. Late assignments will be penalized or will receive no credit **at my discretion**.

- **Feedback (5% total grade)** – At one or more points during the semester, I will ask you to submit feedback about the course via written response, Canvas post, or e-mail message. I use this feedback to adjust the course during the semester and to improve it year to year. **You earn points simply for submitting feedback – you will not be evaluated in any way based upon the content of the feedback.** (That's the point of asking for candid input!)

- **Midterm Exercise (35%)** – Roughly halfway through the course, you will be asked to prepare a research memo on a cybersecurity topic. The memo will be styled after projects typically assigned to junior associates in a law firm: you will be responsible for determining the applicable laws, applying them to a set of facts provided to you, evaluating risks (including from legal or factual uncertainty), and making a set of pragmatic recommendations—all in a relatively short piece of writing. I will provide you with a cover memo that details the facts, the assignment, the constraints (such as word length), and a due date. You will have ten working days to complete the exercise. The exercise is open book, open note, and open Internet: the only restriction is that you may not consult anyone else about it. All work must be your own.
- **Final Examination (60%)** - The largest single component of your grade will be the final examination. It will consist of an **8-hour test** that you can download and take **at a point of your choosing** during exam period (April 26 – May 9). I will post instructions for the final exam to the course Canvas site well in advance of the test - **read them carefully**. You can use your notes, the textbook, and any other resource available to you to respond to the problem. You may not copy pre-prepared material into your exam answer. It goes without saying that your exam must consist of your own work; you may not accept assistance from anyone or provide aid to other students during the examination. (Collaborative preparation in studying for the exam is permitted, and encouraged, to the degree you find it helpful.)

Course Objectives

This class is designed to enable you to:

- Understand the theoretical rationales for regulating Internet communications and activity
- Analyze legal, business, and policy challenges from both an engineering and legal perspective
- Understand, and explain, the technical, social, and legal challenges of securing complex information technology systems
- Explore and apply the range of guidance and policy material for cybersecurity and cyberlaw problems, including statutes, federal regulations, agency documents, technical standards, and engineering literature
- Understand the professional and ethical ramifications of practice as a cybersecurity or Internet attorney

Syllabus

Page numbers refer to the textbook unless otherwise indicated. “Cybersecurity” refers to the Bambauer, Hurwitz, Thaw, and Tschider book. “Internet” refers to the Goldman book. Statutory references are to the U.S. Code unless otherwise indicated.

Some modules will be covered asynchronously: you will watch a recorded lecture on the material at a time of your choosing. These modules are marked as “**ASYNC**” in the list of assignments below.

This syllabus will change as we move through the course; I anticipate that I will reduce, but not increase, the reading as we assess our pace over the semester.

Module and Topics	Date	Assigned Reading
<i>Cybersecurity</i>		
What Is (Cyber)Security?	16 Jan. 2024	Cybersecurity 1-28
Cybersecurity Risk	18 Jan.	Cybersecurity 69-90
Technical Foundations I	23 Jan.	Cybersecurity 151-83
Technical Foundations II	25 Jan.	Cybersecurity 184-202
The Cybersecurity Ecosystem	30 Jan.	Cybersecurity 91-150
Why Cybersecurity Is Hard	1 Feb.	Cybersecurity 277-308
Legal Foundations	6 Feb.	Cybersecurity 203-252
Security Versus Privacy	8 Feb.	Cybersecurity 29-68
Business Foundations	13 Feb.	Cybersecurity 253-76
Business Approaches to Cybersecurity Risk	15 Feb.	Cybersecurity 457-508
Alternative Modalities of Risk Regulation I	20 Feb.	Cybersecurity 509-67
Alternative Modalities of Risk Regulation II	22 Feb.	Frank H. Easterbrook, Cyberspace and the Law of the Horse, 1996 <i>U. Chi. Legal F.</i> 207, 207-08, 210, 211 (from "Simply put") - 213, 216 last paragraph (Canvas) Lawrence Lessig, The Law of the Horse: What Cyberlaw Might Teach, 113 <i>Harv. L. Rev.</i> 501, 501-06, 515, 517, 519-20, 522-23, 530-31, 534-35, 537-38, 541, 548 (1999) (Canvas)
Engineering for Risk	27 Feb.	Cybersecurity 309-52
<i>Cyberlaw</i>		
What Is the Internet? Who Regulates It?	29 Feb.	Internet 1-30
Jurisdiction I	5 Mar.	Internet 31-40
Jurisdiction II	7 Mar.	Alan M. Trammell & Derek E. Bambauer, Personal Jurisdiction and the Interwebs , 100 CORNELL LAW REVIEW 1129 (2015).
Online Contracts	19 Mar.	Internet 41-92
Defamation and Internet Torts	21 Mar.	Internet 261-65, Defamation packet (Canvas)
Section 230 I	26 Mar.	47 U.S.C. § 230; Internet 266-93
Section 230 II	28 Mar.	Internet 294-327

Section 230 III	2 Apr.	- Derek Bambauer, Ninth Circuit Rules Roommates.com May Be Unlawful Host, <i>Info/Law</i>, Apr. 3, 2008 Doe v. MySpace, 528 F.3d 413 (5th Cir. 2008) - Skim Doe v. Friendfinder, 540 F. Supp. 2d 288 (D.N.H. 2008) Mazur v. eBay, 2008 U.S. Dist. LEXIS 16561 (N.D. Cal. 2008) - Michelle Yang, JOLT Digest: Chicago Lawyers Committee for Civil Rights Under Law v. Craigslist, 519 F.3d 666 (2008) (7th Cir. 2008) - Eric Goldman, Dozen Amicus Briefs Oppose the Worst Section 230 Ruling of 2016 (and One Supports It)–Hassell v. Bird, <i>Tech. & Mktg. Law Blog</i> (Apr. 20, 2017) (optional) David S. Ardia, Free Speech or Shield for Scoundrels?, 43 <i>Loyola L.A. L. Rev.</i> 373 (2010)
Network Neutrality I	4 Apr.	- Alexis C. Madrigal & Adrienne LaFrance, Net Neutrality: A Guide to (and History of) a Contested Idea, <i>The Atlantic</i> (Apr. 25, 2014) - Jim Puzzanghera, A brief, strange history of net neutrality (including a 'series of tubes,' a dingo and James Harden), <i>L.A. Times</i> (May 3, 2017) - Gerald R. Faulhaber, <i>Economics of Net Neutrality: A Review</i>, 3 <i>Communications & Convergence Review</i> 53 (2011) (Canvas) Net Neutrality, Last Week Tonight with John Oliver, <i>HBO</i> (June 1, 2014) Net Neutrality, <i>The Oatmeal</i> Don't Break the Net (read the "Understand" section) (optional) David Isenberg, The Rise of the Stupid Network - J.H. Saltzer, D.P. Reed, D.D. Clark, End-to-End Arguments in System Design, 2 <i>ACM Transactions on Computer Systems</i> 277 (1984)
Network Neutrality II	9 Apr.	B. Carpenter (ed.), Architectural Principles of the Internet (RFC 1985) (June 1996)

		- Robert Macmillan, What Everyone Gets Wrong in the Debate Over Net Neutrality, <i>WIRED</i> (June 23, 2014) Verizon v. Federal Communications Comm'n, No. 11-1355 (D.C. Cir. 2014) (please read pages 2-18, 22-30, 31-40, 42-43, 45-47, 50(B)-53, 56(C)-60, 62-63 ; the rest is optional) - Russell Brandom, Verizon admits to throttling video in apparent violation of net neutrality, <i>The Verge</i> (July 21, 2017) - Alina Selyukh & David Greene, FCC Chief Makes Case For Tackling Net Neutrality Violations 'After The Fact.' <i>NPR</i> (May 5, 2017) (optional) Rob Frieden, Internet 3.0: Identifying Problems and Solutions to the Network Neutrality Debate, 1 <i>Int'l J. Comm'n</i> 461 (2007)
Spam	11 Apr.	Internet 352 15 U.S.C. 7701, 7702, 7704, 7705, 7706(a), (f)(1), (g), 7707 - Tim Weber, Gates forecasts victory over spam, <i>BBC News</i> (Jan. 24, 2004) - Carolyn Duffy Marsan, CAN-SPAM: What Went Wrong?, <i>Network World</i> (Oct. 6, 2008) - Venkat, Holomaxx Sues Yahoo, Microsoft, and Others for Non-Delivery of Bulk Emails, <i>Technology & Marketing Law Blog</i> (Nov. 15, 2010) (for the outcome, see Order Granting Motion to Dismiss With Leave to Amend in Part, <i>Holomaxx Tech. v. Microsoft</i>, No. CV-10-4924-JF (N.D. Cal. 2011)) - Derek E. Bambauer, Solving the Inbox Paradox, 10 <i>Va. J. L. & Tech.</i> 1 (2005) (read 8-14, skim 15-30, 50-54) CompuServe v. Cyber Promotions, 962 F. Supp. 1015 (S.D. Ohio 1997)
Social Media	16 Apr.	Internet 352-72
Course Review / Practice Exam Problems	18 Apr.	

Reading Period	April 23-25	
Exam	April 26 – May 9	