

Here is my syllabus from the Fall 2020 Platform Regulation class, and links to readings. In many cases the links go to teaching edits I made for class purposes. Please feel free to re-use whatever is useful. (The migration from Stanford's teaching software did some damage to the formatting in this doc.)

- *Daphne Keller, Director of Program on Platform Regulation, Stanford Cyber Policy Center*

Day 1 - September 15 - Introduction

We will spend time on course logistics, and on an overview of topics the class will explore.

Reading:

- Daphne Keller, [Intermediary Liability 101](#). *This is relatively European in its details, but the high level topics are very similar in any system of law seeking to hold platforms accountable for content shared by Internet users.*

Day 2 - September 17 - Conceptual Foundations for Platform Regulation

We will discuss the Lessig article as a frame for questions about how the law reconciles technical, commercial, and operational realities with societies' policy goals or constitutional mandates.

Reading:

- Larry Lessig, [The Law of the Horse](#) (main text, you can skip the footnotes). *Don't worry about the specific laws or technologies he discusses. Focus on the arguments about regulation, power, and constitutional rights, and how the Internet might change legal thinking on these topics.*

Day 3 - September 22 - Prescriptive Takedown

Laws and Platform Practice

How do platforms handle user content under various rule systems today - what works, what doesn't, and why? We will discuss empirical research about platforms' real-world decisions this week. On Tuesday, we will look at platform behavior under one of the most important U.S. laws, the Digital Millennium Copyright Act (DMCA). On Thursday, we will look at platforms' discretionary policy enforcement, enabled by the flexibility U.S. law gives them under the other most important U.S. law, Communications Decency Act Section 230 (CDA 230). We will come back to look at both the DMCA and CDA in more detail over the next two weeks of class.

Reading:

- [The Manila Principles](#) (click to expand and read each of the numbered sections on the page)
- Digital Millennium Copyright Act (DMCA), [17 USC 512](#)
- Jennifer Urban, Briana Schofield, Joe Karaganis, [Notice and Takedown in Everyday Practice](#), pages 1-67
- U.S. Copyright Office, [Section 512 of Title 17 Report](#), pages 77-83 (“Creators and Rightsowners Report that Section 512 Currently Fails to Protect them from Online Infringement”) (skip the footnotes)

Day 4 - September 24 - Flexible Takedown Laws and Platform Practice

Reading:

- [47 U.S.C. 230](#) (“CDA 230”)
- Kate Klonick, [The New Governors](#), pages 1599-top of 1658 (skip the footnotes)
- Watch *The Moderators*, a 20-minute documentary available [here](#)
- Alex Feerst, [Your Speech, Their Rules](#)
 - Optional: Charlie Warzel, [Everything is Gamergate](#), NYT August 15, 2019

- Chloe Hadavas, [The Future of Free Speech Online May Depend on This Database](#), Slate, August 13, 2020
 - *Optional*: Browse the great library of [materials](#) maintained by the Trust and Safety Professionals Association

Day 5 - September 29 - U.S. Copyright and the DMCA

The DMCA is one of the most robustly litigated and theorized Intermediary Liability laws. Its precedent is often relevant for non-copyright discussions in the U.S. and around the world. It is also hugely consequential for platforms, and for investors considering funding startups, because copyright damages are so massive.

Reading:

- [Perfect 10 v. Visa](#)
- Re-read the statute. (Really. Re-reading and re-re-re-re-reading statutes is a key lawyering practice.) [17 USC 512](#)
 - *Optional*: Review [Urban et al](#), pages 16-19 (a good, quick DMCA overview)
- [UMG v. Shelter Capital](#)
- [Capitol Records v. Vimeo](#)

Day 6 - October 1 – Copyright and Evolving Platform Practice

Reading:

- YouTube Help Articles on ContentID
 - [Using ContentID](#)
 - [Content Eligible for ContentID](#) (click to expand each of the seven subheadings, starting with “Exclusive rights”)
 - [Review Disputed and Appealed Claims](#)

- NYU Engelberg Center, [How Explaining Copyright Broke the YouTube Copyright System](#)
- Timothy B. Lee, [Man agrees to pay \\$25,000 for abusing YouTube's takedown system](#)
 - *Optional*: [Complaint](#) raising 512(f) claim in *YouTube v. Brady*
- U.S. Copyright Office [Section 512 of Title 17 Report](#), pages 180-197 (“Alternative Stakeholder Proposals”) (skip the footnotes)
- EU 2019 [Directive on Copyright in the Digital Single Market](#), Article 17 (search for “Article 17” in the page to find it)
- David Kravets, [A SOPA/PIPA Blackout Explainer](#), Wired (2012)
- Nigel Cory, [The Normalization of Website Blocking Around the World in the Fight Against Piracy Online](#), ITIF (2018)
 - *Optional*: Preview [Engels v. Russia](#) (European Court of Human Rights ruling on site-blocking, 2020) from Day 12 assignment

Day 7 - October 6 - CDA 230 and Platform

Immunity for Illegal Content

The CDA has, with the DMCA, been one of the two pillars of U.S. Intermediary Liability law for two decades. It is widely considered to be the law that “[made Silicon Valley](#)” or “[created the Internet](#).” Today, it is under almost daily attack.

Reading:

- Re-read [47 U.S.C. 230](#) (“CDA 230”)
- [Roommates.com](#)
- Facebook brief in [Opiotennione v. Facebook](#) (focus on CDA 230 discussion, skim the rest)
- *Herrick v. Grindr*, S.D.N.Y. [Motion to Dismiss ruling](#)
- Elizabeth Banker, Internet Association, [A Review Of Section 230's Meaning & Application Based On More Than 500 Cases](#), pages 2-3 (“Executive Summary”)
- Eric Goldman, [Why Section 230 Is Better Than the First Amendment](#), pages 8-16 (starting at Section III).
- Engine, [Primer: The Value of Section 230](#)
 - *Optional*: Anything Jeff Kosseff has written about CDA 230

Day 8 - October 8 - CDA 230 and Platform

Immunity for Setting Private Rules of Content

Moderation

*Note added Oct 6: Today we will be discussing CDA 230 as a source of immunity for platforms' decisions to *remove* content. We are reading the Baidu case today to understand the Constitutional backdrop, but we will discuss the Constitutional law issues next week. If you want to post Discussion Board comments about those issues, please put them in the Day 10 discussion instead of today's. I have also **added a new reading**: the DOJ proposal to revise CDA 230, prompted by President Trump's Executive Order.*

- [Malwarebytes](#)
- [Sikhs for Justice](#)
- Pillsbury, [Section 230 and Keeping the Trolls at Bay: Twitter Obtains a Significant Legal Victory on Content Control](#)
- September 2020 Justice Department [draft 230 amendments](#) and explanatory [cover letter](#)
- [Jian Zhang v. Baidu](#)
- Optional:
 - [Prager v. Google](#) (better known than *Baidu* and from a higher court, but IMO less interesting)
 - Trump Administration [Executive Order on Preventing Online Censorship](#), Keller annotated version

Day 9 - October 13 - Federal Criminal Law and the

Gaps Between the DMCA and CDA

The areas of platform liability covered by federal criminal law -- and not immunized by the CDA or DMCA -- have drawn increasing focus in the past few years. Congress also acted to expand this potential liability, and contract CDA 230 liability, with FOSTA (also known as SESTA) in 2018. Today's material will include laws governing particularly difficult issues, including child sexual exploitation.

Oct 7-8 update: I eliminated the Hepp (Right of Publicity) and Tiffany (Trademark) reading, as discussed in class, but have added two materials from guest speaker Kendra Albert.

Reading:

Federal Criminal Claims Generally

- Federal Obscenity statute, [18 U.S.C. 1465](#)
- Federal Aiding and Abetting statute, [18 U.S.C. 2](#)
- Child Sexual Abuse Material (CSAM) statutes:
 - [18 U.S.C. 2252](#)
 - [18 U.S.C. 2258A](#)
 - [18 U.S.C. 2258B](#)
- [Adobe and PhotoDNA](#)
 - *Optional:* Microsoft, [PhotoDNA FAQ](#)
- Material Support of Terrorism statute: [18 U.S.C. 2239A](#), [18 USC 2239B](#)
- [Pennie v. Twitter](#)
 - *Optional:* Review Chloe Hadavas, [The Future of Free Speech Online May Depend on This Database](#), Slate, August 13, 2020 (from class Day 4)

FOSTA

- [FOSTA](#) redline showing changes to previous law
- Albert et al, [FOSTA In Legal Context](#), Executive Summary (pp. 5-11)
- Movement Lawyering [interview video](#), Kendra Albert and Danielle Blunt video (1 hour)
 - *Optional:* Kendra Albert, [Abuse Solutions](#) blog post (short and super funny)

Day 10 - October 15 - Constitutional and Human Rights Legal Issues

There are two major sets of free expression issues in platform regulation. You can think of them as analogs of the questions we covered for CDA 230. The first is about illegal content. How much liability can states assign to platforms for their users' speech before those laws cause platforms to restrict speech so much, the laws violate the First Amendment or its international analogs? Put another way, what hard constraints on platform liability for user speech are created by the First Amendment or human rights

law? The second is about legal content. What constraints, if any, does the law place on platforms' discretionary content rules under Community Standards or Terms of Service?

Reading:

- Daphne Keller, [Internet Platforms](#), pages 16-20 (Section titled “Speech Consequences and the First Amendment”)
- [Smith v. California](#) (majority opinion only)
 - *Optional*: [CDT v. Pappert](#)
 - *Optional*: Review [The Manila Principles](#)
- [Belen Rodriguez v. Google](#)
- Jack Balkin, [Free Speech Is a Triangle](#), Sections I.A through II.B (i.e., everything prior to II.C, “Privatized Bureaucracy”)
 - *Optional*: For a rare U.S. case assessing state action “laundering” through pressure on private intermediaries, see [Backpage v. Dart](#)
 - *Optional*: For a very concrete human rights law-based review of real-life state/private content enforcement system, see Ken Macdonald, [A Human Rights Audit of the Internet Watch Foundation](#)
- Daphne Keller, [Who Do You Sue?](#), pages 11-22
- *Review*: [Jian Zhang v. Baidu](#)
 - *Optional*: Eugene Volokh and Donald Falk, [First Amendment Protections for Search Engine Search Results](#)
 - *Optional*: Matthias C. Kettemann and Anna Sophia Tiedeke, [Back up: can users sue platforms to reinstate deleted content?](#) (reviewing German “must carry” case law – don’t use this as primary source for U.S. law)

Day 11 - October 20 - Regulating Infrastructure

Much of our discussion focuses on “edge providers,” often meaning social media companies like Facebook. Today we will discuss how the rules may differ for others, including “infrastructure providers.”

Reading:

- Wikipedia Entry, [Amazon Web Services](#)
- Amazon Rekognition [Developer Guide](#)
- Review: DMCA 512 (a), (b), and (d)
- Eric Goldman, [Data Center Avoids Copyright Liability By Forwarding DMCA Notices to Its Customer—ALS Scan v. Steadfast](#)
- Matthew Prince, [Why We Terminated Daily Stormer](#)
- Annemarie Bridy, [Remediating Social Media](#), pages 199-214
- Annemarie Bridy, [Internet Payment Blockades](#), 1524-1529 (just intro, describing effectiveness of wikileaks blockade)
- *Infowars v. Paypal*, [complaint](#)
- Katie Benner and Sui-Lee Wee, [Apple Removes New York Times Apps From Its Store in China](#), NYT

Day 12 - October 22 - Content Takedown Across

Borders

*When can courts in one country impose their content removal requirements globally?
When (and how) can they order national infrastructure providers like ISPs to block content from outside the country?*

Reading:

- [Google v. Equustek](#) (Canadian Supreme Court, 2017)
- [Google v. Equustek](#) (N.D. Cal order granting preliminary injunction)
- [Google v. Equustek](#) (Supreme Court of British Columbia, 2018) (read with a focus on the relevance of the U.S. order)
- Mary Samonte, [Google v CNIL Case C-507/17: The Territorial Scope of the Right to be Forgotten Under EU Law](#) (case summary only – you do not have to read any material below the “Comment” heading)
 - Optional: Dan Svantesson, [Bad news for the Internet as Europe’s top court opens the door for global content blocking orders](#) (discussing subsequent CJEU case, *Facebook Ireland v. Glawischnig-Piesczek*, involving potential global application of Austrian defamation law)
- [Engels v. Russia](#)
 - Optional: Daphne Keller, [A Glossary of Internet Content Blocking Tools](#)

Day 13 - October 27 - International Approaches: Frameworks

Reading:

- [Marco Civil da Internet](#) (Brazil)
- [E-Commerce Directive](#) (EU) Recitals 40-49 and Articles 12-15. *This is the EU-wide law that, as implemented in national law of Member States, has governed platform liability for almost two decades.*
- [Facebook Ireland v. Glawischnig-Piesczek](#)
- Daphne Keller, [Facebook Filters, Fundamental Rights, and the CJEU's Glawischnig-Piesczek Ruling](#), pages 617-622 (Sections II and III.1)
- UK [Online Harms White Paper](#), pages 5-10, 41-47, and 53-58. *This is part of a broader trend toward (1) a “duty of care” approach, (2) extending media regulation models to Internet platforms, and (3) regulating both unlawful and merely “harmful” content online.*

Day 14 - October 29 - International Approaches: The Right to Be Forgotten and Converging Intermediary Liability and Data Protection Legal Frameworks

Reading:

- Daphne Keller, [The Right Tools](#), pages 305-319 (overview of data protection law, application to intermediaries, the Google Spain ruling, and the GDPR)
- Aleksandra Kuczerawy & Jef Ausloos, [From Notice-and-Takedown to Notice-and-Delist: Implementing Google Spain](#), pages 220-246 (i.e. don't read the appendices).
- Article 29 Working Party [Guidelines](#) on *Google Spain* implementation

- *Optional:* The actual [Google Spain](#) ruling. I used to assign this, but it never went all that well.
- WILMap entry, [La Fortuna v. INAI](#) (Mexico)
- Columbia Global Freedom of Expression Project, summary of *A.T. v. Globe24h.com* (Canada)

Day 15 - November 2 - Media Regulation

Approaches

Reading:

- [Reno v. ACLU](#), excerpt focused on communications law precedent
- [Turner II](#)
 - *Optional:* [USTA v. FCC](#), denial of rehearing en banc, excerpt from dissent of J. Kavanaugh
 - *Optional:* Harold Feld, [I Accidentally Write A Book On How To Regulate Digital Platforms](#)
- EU Audio Visual Media Services Directive ([AVMSD](#)) 2018 amendments, Articles 28a and 28b only
- Irish Ministry's 2019 [proposal](#) for social media regulation, Table of Contents and pages 78-99 (plus any terms you need to check in the definitions section)

Day 16 - November 5 - Regulating Privatized

Content Moderation

*We have many years of solid legal thinking about regulating **illegal** content on platforms. (Much of it from outside the U.S.) The legal thinking about regulating platforms' moderation of **legal** content is much newer, and very much still evolving.*

Nov. 2 Note: I made the Hawley reading optional and am assigning review of the DOJ reading, because discussing it in detail will be a good way to review CDA 230.

Reading:

- evelyn douek, [The Rise of Content Cartels](#)

- Review from Day 8: September 2020 Justice Department [draft 230 amendments](#) and explanatory [cover letter](#)
 - *Optional:* Hawley [Ending Support for Internet Censorship Act](#)
- Schatz/Thune [PACT Act](#)
 - *Optional:* Daphne Keller, [CDA 230 Reform Grows Up: The PACT Act Has Problems, But It's Talking About the Right Things](#)
- Mark MacCarthy, [Transparency Requirements for Digital Social Media Platforms: Recommendations for Policy Makers and Industry](#), pages 1-3
- *Optional:*
 - Daphne Keller, [If Lawmakers Don't Like Platforms' Speech Rules, Here's What They Can Do About It. Spoiler: The Options Aren't Great](#), Techdirt (publication pending September 2020)
 - Mark MacCarthy, [A Consumer Protection Approach](#)
 - Paddy Leerssen, [The Soap Box as a Black Box: Regulating Transparency in Social Media Recommender Systems](#)
 - Emma Llansó et al, [Artificial Intelligence, Content Moderation, and Freedom of Expression](#) Spandana Singh and Kevin Bankston, [The Transparency Reporting Toolkit: Content Takedown Reporting](#)
 - Explore the [Lumen Database](#)

Day 17 - November 10 - Converging Legal

Regimes

Issues at the intersection of legal specialties – including speech law, privacy law, and competition law -- are under-examined in the literature and in legal proposals. We have a patchwork of (mostly short) reading assignments this week, and lots of leads for people who want to dig deeper.

Reading:

Competition as Underlying Issue

- Cory Doctorow, [Regulating Big Tech makes them stronger, so they need competition instead](#)

- *Optional:* Cory Doctorow, [Interoperability and Privacy: Squaring the Circle](#)
- *Optional:* Cory Doctorow, [Adversarial Interoperability: Reviving an Elegant Weapon From a More Civilized Age to Slay Today's Monopolies](#)
- *Optional:* Mike Masnick, [Protocols, Not Platforms](#)

Tensions Between Competition and Other Priorities, Including Privacy

- Ian Brown, [Interoperability as a tool for competition regulation](#), pages 19-31
 - *Optional:* UK Competition and Markets Authority, [Online platforms and digital advertising](#), pages 145-149 (discussing data protection issues in advertising competition – this overall report is very useful if you are interested in advertising)
- Erin Egan (Facebook), [Charting a Way Forward: Data Portability and Privacy](#)
 - *Optional:* Kevin Bankston, [How We Can 'Free' Our Facebook Friends](#)
 - *Optional:* Daphne Keller [Q&A](#) on Cambridge Analytica

Other Legal Barriers to Data Sharing for Interoperability, Portability, and Transparency

- Knight First Amendment Institute, [Letter to Mark Zuckerberg](#)
- Corynne McSherry, [Want More Competition in Tech? Get Rid of Outdated Computer, Copyright, and Contract Rules](#). *What McSherry describes is the tip of the iceberg. Scraping cases often involve dusty-sounding claims like Trespass to Chattels and more.*
- Orin Kerr, [Is the Supreme Court About to Take Its First Big CFAA Case?](#) (summarizing *van Buren*, the case now under review at the Supreme Court)
- Naomi Gilens and Jamie Williams, [Federal Judge Rules It Is Not a Crime to Violate a Website's Terms of Service](#)
 - *Optional:* Orin Kerr's [summary](#) of *HiQ v. LinkedIn* CFAA case
- Inform, [News: German Court orders Google not to link to Lumen database showing takedown order](#)
 - *Optional:* NetzDG reports summarized and linked to in Heidi Tworek and Paddy Leerssen, [An Analysis of Germany's NetzDG Law](#)

Day 18 - November 12 - Class Review and Exam

Discussion

Reading: TBD based on class feedback about areas for closer review and discussion.

Notes on Reading Material and Classroom Discussion

Difficult content: In this class we will often ask “what online content is so bad that platforms should take it down, as a matter of legal obligation or moral responsibility?” Mostly we will consider those questions in the abstract. But sometimes we will look at cases or discuss hypothetical examples of speech that is upsetting, offensive, or harmful.

Workload: The reading for the first few classes is light, because I find that shopping period disrupts reading and students often miss things. It gets heavier in some later classes.

Assigning my own work: I assigned a lot of my own writing this time. Usually that is in order to provide relatively short summaries of background information, in areas where the other potential readings would be much longer. I don't really like being that teacher who assigns her own work, so I'm open to recommendations for substitute material for future classes.

Public and private materials: Most of the reading is on public web-pages or public-access Google docs I created. Feel free to share those. Please do not share private materials including class video or other students' posts on Discussion boards or Docs.