

CO259 CYBERLAW
TTH 12:00 - 1:15 P.M., MERKERT 127
SPRING 2009

DALE HERBECK

Office: 21 Campanella Way 521
Office Hours: 1:30 to 3:30 p.m. on Tuesday afternoons,
9:30 to 11:30 a.m. on Thursday mornings,
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COURSE DESCRIPTION. This course will study the extension of communication law to the Internet, assess a range of pending proposals designed to regulate free speech in cyberspace, and discuss a variety of national and international schemes intended to govern the developing global information infrastructure. In the process, the course will consider free speech (political speech, sexually explicit expression, and defamation), intellectual property (trademark and copyright), and emerging issues (privacy, unsolicited commercial email or spam, schools, and international law). This course will not cover issues related to electronic commerce or contracts, gambling, personal jurisdiction, or Internet taxation.

COURSE MATERIAL. As an alternative to a traditional textbook, Cyberlaw will be taught using a virtual reader. The reader and all other course materials (handouts, slide, review sheets, practice tests, etc.) will be posted to Blackboard Vista (not to be confused with Microsoft Vista, an operating system used on many personal computers). Students registered for Cyberlaw can access Blackboard Vista in one of two ways:

1. Using a Firefox or Safari web browser, go to <http://cms.bc.edu> and login with your BC username and password. Cyberlaw should appear in the course list.
2. Blackboard Vista is also available through Agora (available at <http://portal.bc.edu>). Once you login with your BC username and password, you can access Blackboard Vista and Cyberlaw.

If you have recently added Cyberlaw, you may need to wait as long as 24 hours for your access privileges. If you still have trouble accessing Blackboard Vista, please consult the “Student FAQs” prepared by Instructional Design and eTeaching Services available at:

http://idesweb.bc.edu/ides/website/teaching_tools/bb_vista/stu_support/faq

ABOUT THE READINGS. The “Reader” contains specific assignments for each class session. These assignments are organized as follows:

1. **WEB WORK.** Visit, review, or read this material as instructed. The web work either forms the basis of the cases or illustrates concepts being discussed in class.

WARNING: Completing the web work may require you to visit web sites that contain offensive material. You will find links and references to sites that contain racist, scatological, indecent, sexually explicit, and otherwise objectionable content. Please do not read this material if you find it to be objectionable.

2. **CASE WORK.** The bulk of the reading is composed of the court decisions discussed in class. In contrast to the web work, you will be held accountable for knowing the facts, the holdings, and the broader significance of all court cases included in the reader.
3. **COMMENTARY.** To help with some topics, the virtual reader also contains links to supplemental material. This material was selected to help you understand the web work and case work and will be included on the examinations.

Readings should be completed before class and you should be prepared to answer questions about the assigned reading. Failure to adequately prepare may adversely affect your grade for this course. The case work and commentary for this course is extremely complex and it would be difficult, if not impossible, to master any appreciable portion of the readings in a single extended sitting.

EXAMINATIONS. Final course grades will be assigned based on two midterms and a comprehensive final at the end of the semester.

1. **MIDTERM EXAMINATIONS.** There will be two midterm elections, one on Tuesday, 24 February 2009, and another on Thursday, 2 April 2009. The midterms will be composed of sixty true/false and thirty multiple choice questions. A comprehensive study guide and a practice examination will be distributed ten days before each of the midterms.
2. **FINAL EXAMINATION.** The final examination will be given during our regularly scheduled examination period on Saturday, 9 May 2009, at 9 a.m. The final examination will be comprehensive and will be composed of one hundred true/false and sixty multiple choice questions. Like the midterms, a study guide and a practice examination will be distributed ten days before the final.

The dates for all three examinations are clearly indicated on this syllabus, the course schedule, and the study guide. Absent the most extraordinary of circumstances (documented in writing by the Dean's Office), there will be *no* make-up examinations.

WARNING. Please note that this policy includes our final examination scheduled by the university for Saturday, 9 May 2009, at 9 a.m. Your summer and/or travel plans do not constitute legitimate grounds for rescheduling the final. If any of the exam dates are inconvenient, you should drop Cyberlaw and find a class that is more conducive to your schedule.

EXTRA CREDIT. Over the course of the semester, five opportunities will be provided to earn extra credit points by attending lectures and events sponsored by the Communication Department. To receive extra credit (10 points for each opportunity), you must satisfy the following conditions:

1. You must attend the entire event. This means you must be present when the event starts and stay until the event ends.
2. You must answer the questions on the back of the extra credit sheet to demonstrate that you were in attendance and that you listened to the presentation. Sheets will be distributed one week prior to any designated event.
3. You must return the completed form at the culmination of the event. To prevent one student from completing a form for another student, a student may submit a single form.
4. No student may earn credit for attending more than three events (30 points).

WARNING: Extra credit can help a test score, but it cannot save your final course grade. At most, 30 extra credit points will improve your final grade by half a letter (e.g., B to B+).

GRADING. Letter grades will be assigned according to the following scale:

90 to 100 percent	A	=	Excellent
80 to 89 percent	B	=	Very Good
70 to 79 percent	C	=	Average
60 to 69 percent	D	=	Below Average
00 to 59 percent	F	=	Failing

By definition a large proportion of all work is “average.” If a large proportion of the work prepared is “very good” or “excellent” then the “average” standard will be adjusted accordingly. Consequently, there will be substantially fewer scores in the 80 to 100 percent range than in the 70 to 79 percent range.

In assigning course grades, the examinations will be weighed according to the following distribution of points:

Midterm examination #1 (20 January to 19 February)	300	possible points
Midterm examination #2 (26 February to 31 March)	300	possible points
Final Examination (comprehensive)	400	possible points
TOTAL	1000	POSSIBLE POINTS

Scores on the two midterms, the final examination, and any extra credit points will be totaled to determine course grades. In the past, students earning between 900 and 1000 points have received an “A,” 800 and 899 have received a “B,” 700 and 799 a “C,” and 600 and 699 a “D.” Anyone earning less than 600 points will fail the class. Scores in the lower 30 to 40 percent of a range will receive a “minus” qualifier. Scores in the upper 10 percent of a range will receive a “plus” qualifier. An excessive number of absences will result in the reduction of a final course grade (see attendance policy for details).

Beyond the point scale, two special rules will be used when assigning course grades:

1. **FINAL EXAMINATION.** All students scoring in the 90th percentile on the final will receive an A for the course. Any student earning less than 200 points (50%) on the final will fail the course, irrespective of midterm scores.
2. **PASS/FAIL.** A handful of students (usually graduating seniors) opt to take Cyberlaw as a pass-fail course. The minimum requirements for passing are as follows: a) you must attend a minimum of 22 of the 26 scheduled class sessions (starting on 20 January), b) you must achieve a passing score (60%) on the final examination and one of the two midterms, and c) you must earn at least 600 of the 1000 possible points. Failure to satisfy all three requirements will result in failure for the course.

COURSE POLICIES. This course will be governed by the “Academic Regulations” delineated in the Boston College Undergraduate Catalog and by the policies of the Communication Department. Three of these policies are of particular importance:

Department of Communication Attendance Policy (Communication Department)

Attendance is required as a condition of successful completion of all courses in the Communication Department. After missing any class session, a student is responsible for finding out about assignments, due dates, announcements, handouts, and so forth that were covered during the missed session, and for making up any missed work. The student is also responsible for obtaining class notes from a classmate for the session, and for learning the material from that session for any relevant exams or quizzes.

The equivalent of two weeks of absence from any course will reduce a student's course grade by one full letter grade. Absence from more than a combined total of three weeks of class meetings will result in automatic failure of the course. (Since this class meets twice a week, four absences will result in a letter grade reduction and six absences will result in automatic failure.) There are no exceptions to this rule.

Absences for any reason--illness, personal crises, athletics or other extra-curricular activities--are included in this total. If a student is involved in any activity that might require that student to miss two or more weeks of class, then that student should not enroll in Cyberlaw.

Beginning on Tuesday, 20 January 2009, attendance sheets will be circulated shortly after the beginning of class. Students are responsible for signing next to their name on the sheets. Students arriving after the sheets are circulated or leaving early will be counted as absent for the class. Attendance totals will be circulated immediately after the midterm examinations so students can check their absences.

WARNING: The attendance sheets are the definitive record. It is your responsibility to sign the sheet. If your signature is not on the sheet, you will be counted as absent even if you have handouts or notes from the day in question.

WARNING: The attendance will be recorded during all class sessions. Many students make the mistake of taking absences early in the semester. Having expended their "free" absences, they are disappointed when they need to miss a class later in the semester for a legitimate reason. Please do not make this mistake as it can seriously impact your final course grade.

Policy on Academic Integrity (Communication Department, College of Arts and Sciences)

The Communication Department holds the highest standards of academic honesty for all students. The maintenance of these standards is essential to the basic functioning of the department as an academic community, and makes possible the conduct of fair, meaningful, and worthwhile educational experiences. Because the faculty of this department takes academic honesty so seriously, we remind all students in all Communication courses of the academic integrity statement signed by all students upon matriculation at Boston College.

Instances of cheating, plagiarism, dishonesty or collusion will be treated seriously within the Communication Department. Sanctions for such breaches of academic integrity will include failure of the course, ejection from the major, and/or expulsion from Boston College. All cases will be referred to the department chairperson and/or the Dean of the College of Arts and Sciences.

In order to help ensure honesty in written work submitted as part of the course requirements for courses within the communication department, the department requires that ALL written assignments for ALL department courses be handed in on diskette as well

as on paper. The diskettes will routinely be checked for plagiarized material through a professional service that analyzes the content of the work against a broad range of Internet and on-line databases. Written work will not be accepted unless it is accompanied by a diskette version.

STATEMENT ON ACADEMIC INTEGRITY FROM THE COLLEGE OF ARTS AND SCIENCES:

The College of Arts and Sciences expects all students to adhere to the accepted norms of intellectual honesty in their academic work. Any forms of cheating, plagiarism, or dishonesty or collusion in another's dishonesty is a fundamental violation of these norms.

CHEATING is the use or attempted use of unauthorized aids in any exam or other academic exercise submitted for evaluation. This includes data falsification; the fabrication of data; deceitful alteration of collected data included in a report; copying from another student's work; unauthorized cooperation in doing assignments or during an examination; the use of purchased essays, term papers, or preparatory research for such papers; submission of the same written work in more than one course without prior written approval from the instructor(s) involved; and dishonesty in requests for either extensions or papers or make-up examinations.

PLAGIARISM is the deliberate act of taking the words, ideas, data, illustrative material, or statements of someone else, without full and proper acknowledgment, and presenting them as one's own.

COLLUSION is assisting or attempting to assist another student in an act of academic dishonesty.

As part of your scholarly development, you must learn how to work cooperatively in a community of scholars and fruitfully utilize the work of others without violating the norms of intellectual honesty. You have a responsibility to learn the parameters of collaboration and the proper forms for quoting, summarizing and paraphrasing.

Faculty members who detect any form of academic dishonesty have the responsibility to take appropriate action. The faculty member also has the responsibility to report the incident and penalty to the Department Chairperson and the appropriate Class Dean. The report will remain in your student file until you graduate.

If the gravity of the offense seems to warrant it or if the faculty member prefers that another academic authority decide the matter, he or she may refer the case to a Dean. In addition, if the student is unwilling to accept the faculty member's decision, he or she may choose to have the matter adjudicated either by an Associate Dean or by an Administrative Board. The section of the College of Arts and Sciences in the Boston College Undergraduate Catalogue has further details about this process.

Academic integrity is a very important matter. If you have any questions in any of your courses about what is allowed or not allowed, please discuss the matter immediately with the instructor.

WARNING: The Communication Department is fully committed to academic integrity and all instances of cheating, plagiarism, and collusion will be punished. Any dishonesty in Cyberlaw will result in failure for the course. In particular, please note that any attempt to misrepresent attendance will be treated as a form of dishonesty and will be punished accordingly.

Statement on Classroom Civility (Herbeck)

It has become fashionable to lament the demise of civility in the classroom. To appreciate this problem, it is important to remember why civility is an important virtue. Civility is not an end in and of itself; rather civility is an essential precondition for learning. In the interest of maximizing the educational experience of all students, the following civility standards will be enforced in Cyberlaw:

No student shall lessen the learning experience of others in the classroom by arriving late to class. No student shall lessen the learning experience of others in the classroom by leaving the classroom while class is in session, except for true medical emergencies. (Students arriving late will not be allowed to sign the attendance sheet and students leaving early without notifying the teaching assistants will have their signature removed from the sheet.)

No student shall disrupt the learning experience of others in the classroom by talking to a neighbor, exchanging messages (written or electronic) with other students, reading the newspaper, completing homework for other classes, or playing with a laptop computer while class is in session.

Cell phones, pagers and other electronic devices (with the exception of laptop computers used for taking notes) must be turned off during class.

No student shall disrespect other Boston College students, professors or the housekeeping staff by leaving trash, food, or recyclables in the room at the end of the class session.

FINAL THOUGHTS.

ABOUT THE SYLLABUS. This syllabus constitutes a contract between the student and the professor and remains in effect from the first day of the course until final grades are assigned. The terms of this contract are binding and non-negotiable. Students unwilling to abide by the syllabus are strongly advised to drop this course.

ABOUT GRADE BREAKS. Any grading or tabulation mistakes will be corrected and, if that changes final course grades, the necessary paperwork will be submitted. Once the grade breaks have been set, however, equity demands those breaks be consistently applied to all students. It would be wrong for one student with 890 points to receive a B+, while another student with the same point total received an A-.

ABOUT FAIRNESS. As might be expected, students are often disappointed when they discover that they will lose a letter grade due to poor attendance or, worse yet, fail the course due to an academic integrity issue. When confronted with the rules of the course or the policies of the Communication Department, aggrieved students will frequently plead for an exception. More often than not, these appeals will start with a variation on the following sentence: "I know you have a rule, but . . ."

Many students subscribe to fairness in principle, so long as the principle is not applied to their disadvantage. Some students will passionately argue for special treatment due to their special circumstances. Worse yet, some self-serving students go so far as to argue that fairness is irrelevant because they won't tell anyone about any "deal."

Great philosophers like John Rawls have written books in which they address the importance of fairness. The syllabus is not meant to add to this body discourse, but rather to note that clear rules which are consistently applied are fair to all students.

CO259 CYBERLAW
PRELIMINARY COURSE SCHEDULE & READING LIST
SPRING 2009

(All course materials are available using Blackboard Vista)

January 15 – Introduction to the Course

UNIT ONE:
FREEDOM OF SPEECH

January 20 – Blasphemy, Seditious and More (includes incitement and threats)

Web work:

- Visit the Stormfront web site
- Visit the Nuremberg Files web site (mirror of the original)
- Visit the Jake Baker (Abraham Alkhabaz) Information page

Case work:

- Brandenburg v. Ohio (1969)
- Watts v. United States (1969)
- United States v. Alkhabaz (also known as Jake Baker) (6th Cir. 1997)
- Planned Parenthood v. American Coalition of Life Activists (9th Cir. 2002)

Commentary:

- Mike Godwin, “Baker Column,” Internet World Magazine, June 1995
- Mark Potak, “Internet Hate and the Law,” Southern Poverty Law Center Intelligence Report, Winter 2000

January 22 – Defamation #1: Basics

Case work:

- New York Times v. Sullivan (1964)
- Gertz v. Welch (1974)

Commentary

- Mike Godwin, “Libel Law: Let It Die,” Wired, March 1996
- Noam Cohen, “Defending Wikipedia’s Impolite Side,” New York Times, August 20, 2007
- “Yelp User Faces Lawsuit Over Negative Review,” CNET News, January 6, 2009
- “Lawsuit Over Yelp Review Settled,” CNET News, January 9, 2009

January 27 – Defamation #2: Publishers vs. Distributors

Web work:

- Read excerpts from Section 230 of the Telecommunications Act

Case work:

- Cubby v. Compuserve (S.D. N.Y. 1991)
- Stratton Oakmont v. Prodigy (N.Y.S. 1995)
- Zeran v. America Online, Inc. (4th Cir. 1997)
- Blumenthal v. Drudge (D.D.C. 1998)

Commentary

- Mike Godwin, “The Drudge Retort: Is Matt Drudge Guilty of Libel,” Reason, February 1998

January 29 – Defamation #3: The Section 230 Cases

Web work:

- Visit the Juicy Campus web site (make sure to read the “Privacy & Tracking Policy”)

Case work:

- Jane Doe v. America Online (Fla. 1998)
- Ben Ezra, Weinstein and Company v. America Online (10th Cir. 2001)
- PatentWizd v. Kinko’s (S.D. S.D. 2001)
- Schneider v. Amazon.com (Ct. of Appeals, Wash., 2001)
- Carafano v. Metrospash.com (9th Cir. 2003)
- Doe v. MySpace (W.D. Tex. 2007)

Commentary

- Bella English, “Dorm Rumors: Juicy Campus Helps College Students Spread Secrets and Lies - and Ruin One Another’s Reputations,” Boston Globe, December 29, 2008

February 3 – Defamation #4: Anonymity

Web work:

- Visit the Skanks in NYC blog (<http://skanksnyc.blogspot.com/>)

Case work:

- McIntyre v. Ohio Elections Commission (1995)
- ACLU of Georgia v. Miller (N.D. Ga. 1997)
- Dendrite International v. Doe, No. 3 (N.J. Sup. Ct. 2001)

Commentary

- Jonathan D. Wallace, “Nameless in Cyberspace: Anonymity on the Internet,” CATO Institute Briefing Papers #54, December 9, 1999
- Sam Bayard, “Anonymity of ‘Skanks in NYC’ Blogger Could Hinge on Fact-Opinion Divide,” published on Citizens Media Law Project web site, January 8, 2009

February 5 – Cyberporn #1: The Case for Regulating the Internet

Web work:

- Visit Yahoo’s Directory on Sexuality
- Visit “Obscenity Crimes.org” (Morality in Media)

Case work:

- Roth v. United States (1957)
- Ginsberg v. United States (1968)
- Miller v. California (1973)
- Federal Communications Commission v. Pacifica Foundation (1978)
- Renton v. Playtime Theatres (1986)

Commentary

- Read Philip Elmer-Dewitt, “On a Screen Near You: Cyberporn,” Time, July 3, 1995, pp. 38+.

February 10 – Cyberporn #2: Communications Decency Act (CDA)

Web work:

- Read excerpts from the Communications Decency Act (CDA)

Case work:

- Reno v. ACLU (1997)

Commentary

- Solveg Bernstein, “Beyond the Communications Decency Act: Constitutional Lessons of the Internet,” 4 November 1996

February 12 – Cyberporn #3: Child Online Protection Act (COPA)

Web work:

- Read excerpts from the Child Online Protection Act (COPA)

Case work:

- Ashcroft v. ACLU I (2002)
- Ashcroft v. ACLU II (2004)

Commentary

- Associated Press, “3rd Circuit: COPA Violates First Amendment,” July 23, 2008

February 17 – Cyberporn #4: Children’s Internet Protection Act (CIPA) of 1996

Web work:

- Read Federal Communications Commission, Children’s Internet Protection Act, 12 January 2006
- Compare Google’s directory of website arguing against Internet filtering with its directory of websites arguing for Internet filtering

Case work:

- Mainstream Loudoun v. Board of Trustees of the Loudoun County Library (E.D. Va. 1998)
- Kathleen R. v. City of Livermore (Cal. App. 2001)
- American Library Association v. United States (2003)

Commentary

- Marjorie Heins, Christina Cho, and Ariel Feldman, Internet Filters: A Public Policy Report, 2006

February 19 – Cyberporn #5: State and Local Laws

Web work:

- Visit the Voyeur Dorm web site

Case work:

- United States v. Thomas (6th Cir. 1996)
- American Library Association v. Pataki (S.D. N.Y. 1997)
- Voyeur Dorm L.C. v. City of Tampa (11th Cir. 2000)

Commentary

- Morality in Media, “A Quick Primer on Obscenity Laws and the First Amendment,” July/August/September 2007

February 24 – Midterm #1

*UNIT TWO:
INTELLECTUAL PROPERTY*

February 26 – Trademark #1: Basics

Web work:

- Read the United States Patent and Trademark Office's pamphlet titled Basic Facts About Trademarks
- Compare the www.clue.com and www.cluegame.com web sites
- Visit the Terri Welles web site
- Read the Trademark Dilution Revision Act

Case work:

- Polaroid Corp. v. Polarad Electronics Corp. (2nd Cir. 1961)
- Brookfield Communications v. West Coast Entertainment (9th Cir. 1999)
- Playboy Enterprises v. Netscape Communications Co. (C.D. Cal. 1999)
- Hasbro v. Clue Computing (1st Cir. 2000)
- Playboy Enterprises v. Welles (9th Cir 2002)
- Mosley v. Victoria's Secret (2003)

Commentary:

- Dale M. Cendali and Bonnie L. Schriefer, "The Trademark Dilution Revision Act of 2006: A Welcome - and Needed - Change," Michigan Law Review First Impressions 108 (2006)

March 3 – NO CLASS, SPRING BREAK

March 5 – NO CLASS, SPRING BREAK

March 10 – Trademark #2: Domain Names, Cybersquatting, and Gripe Sites

Web work:

- Visit the Internet Corporation for Assigned Names and Numbers (ICANN) web site
- Read excerpts from the Anticybersquatting Consumer Protection Act (ACPA)
- Visit farmersinsurancegroupssuck.com, muderking.com, Starbucked.com and Untied.com
- Compare the PETA and People Eating Tasty Animals web sites
- Compare the falwell.com and fallwell.com web sites

Case work:

- MTV v. Curry (S.D. N.Y. 1994)
- Intermatic v. Toepfen (N.D. Ill. 1996)
- Planned Parenthood Federation of America v. Bucci (S.D. N.Y. 1997)
- Sporty's Farm v. Sportsman's Market, Inc. (2nd Cir. 2000)
- Shields v. Zuccarini (3rd. Cir 2001)
- E. & J. Gallo Winery v. Spider Webs Ltd., (5th Cir. 2002)
- Bally Total Fitness Holding Corp. v. Faber (C.D. Cal. 1998)
- People for the Ethical Treatment of Animals v. Doughney (E.D. Va. 2000)
- Lamparello v. Falwell (4th Cir. 2005)

Commentary:

- Christopher Beam, "Is Cybersquatting Against the Law?" Slate, December 12, 2008

March 12 – Copyright #1: Basics

Web work:

- Read the United States Copyright Office's pamphlet titled Copyright Basics
- Read the summary of the No Electronic Theft Act (NET)
- Read the summary of the Digital Millennium Copyright Act (DMCA)
- Read the summary of the Sonny Bono Copyright Term Extension Act (CTEA)

Case work:

- Harper and Row v. Nation Enterprises (1985)
- U.S. v. LaMacchia (D. Mass. 1994)
- Eldred v. Reno (D.D.C. 2003)

Commentary:

- Electronic Frontier Foundation, "Unsafe Harbors: Abusive DMCA Subpoenas and Takedown Demands," September 2003

March 17 – Copyright #2: Fair use and parody

Web work:

- Use the Ditto search engine
- Visit the Free Republic web site

Case work:

- Sony Corporation of America v. Universal City Studios (1984)
- Kelly v. Arriba Soft Corp. (C.D. Cal. 1999)
- Los Angeles Times v. Free Republic (C.D. Cal. 2000)

March 19 – Copyright #3: Infringement

Case work:

- Religious Technology Center v. Netcom (N.D. Cal. 1995)
- Playboy Enterprises v. Hardenburgh (N.D. Ohio 1997)
- Playboy Enterprises v. Sanfilippo (S.D. Cal. 1998)
- Complaint for declaratory and injunctive relief and damages, Viacom v. YouTube (filed S.D. N.Y. 2007)

Commentary

- Catherine Holahan, "Viacom vs. YouTube: Beyond Privacy," Business Week, July 3, 2008

March 24 – Copyright #4: Secondary Liability (MP3.com, Napster & Grokster)

Web work:

- Visit the RIAA web site (make sure to read the "The Law on Piracy")
- Visit the Napster 2.0 web site
- Visit the Grokster web site
- Visit the Kazaa web site

Case work:

- UMG Recordings, Inc. v. MP3.com (S.D. N.Y. 2000)
- A & M Records, Inc. v. Napster, Inc. (9th Cir. 2001)
- A & M Records, Inc. v. Napster, Inc. (9th Cir. 2002)
- Metro-Goldwyn-Mayer Studios v. Grokster (2005)

March 26 – Copyright #5: Secondary Liability, cont. (BitTorrent and Beyond)

Web work:

- Visit the Pirate Bay web site (make sure to read the “Legal Threats”)

Case work:

- Capitol Records v. Thomas (C.D. Minn. 2008)

Commentary:

- Electronic Frontier Foundation, “RIAA v. The People: Five Years Later,” September 2008
- Sarah McBride and Ethan Smith, “Music Industry to Abandon Mass Suits,” Wall Street Journal, December 19, 2008
- Ben Sisario, “Music Sales Fell in 2008, but Climbed on the Web,” New York Times, January 1, 2009

March 31 – Copyright #6: Linking, Framing and Inlining

Case work:

- Ticketmaster Corp. v. Microsoft Corp. (settled out of court in 1997)
- Washington Post v. Total News (S.D. N.Y. 1997)
- Futuredontics Inc. v. Applied Anagramics Inc. (C.D. Ca. 1998)
- Painewebber Inc. v. wwwpaineweber.com (E.D. Va. 1999)
- Intellectual Reserve v. Utah Lighthouse Ministry (C.D. Utah 1999)

April 2 – Midterm #2

UNIT THREE: EMERGING ISSUES

April 7 – Privacy #1: Basics

Case work:

- Zeran v. Diamond Broadcasting (W.D. Ok. 1997)
- Leary v. Punzi (N.Y.S. 1999)
- Michels v. Internet Entertainment Group (C.D. Cal. 1998)
- Dwyer v. American Express (Ill. 1995)

April 9 – NO CLASS, HOLY THURSDAY

April 14 – Privacy #2: Email

Web work:

- Read excerpts from Electronic Communications Privacy Act
- Review BC Policies and Procedures Manual, Use of University Technological and Information Resources

Case work:

- Smyth v. Pillsbury (E.D. Penn. 1996)
- Terry Jessup-Morgan v. America Online (E.D. Mich. 1998)
- McVeigh v. Cohen (D.D.C. 1998)
- Fraser v. Nationwide Mutual Insurance Company (3rd. Cir. 2003)

April 16 – Privacy #3: Data Mining

Web work:

- Visit the EPIC Online Guide to Practical Privacy Tools web site
- Read the summary of Children’s Online Privacy Protection Act of 1998
- Read Federal Trade Commission, Fair Information Practices in the Electronic Marketplace (2000)
- Visit TRUSTe web site

Case work:

- In the matter of Geocities (1998)

Commentary

- Michael Barbaro and Tom Zeller, Jr., “A Face Is Exposed for AOL Searcher No. 4417749,” New York Times, August 9, 2006
- Federal Trade Commission, “Sony BMG Music Settles Charges Its Music Fan Websites Violated the Children’s Online Privacy Protection Act,” December 11, 2008

April 21 – Unsolicited Commercial Email

Web work:

- Read the text of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the “CAN-SPAM” Act)

Case work:

- Cyber Promotions, Inc. v. America Online (E.D. Pa. 1996)
- CompuServe Inc. v. Cyber Promotions (S.D. Oh. 1997)
- Washington v. Heckel (Wash. 2001)
- White Buffalo Ventures v. University of Texas at Austin (5th Cir. 2005)

Commentary

- Eric Goldman, “Where’s the Beef? Dissecting Spam’s Purported Harms,” John Marshall Journal of Computer & Information Law 22 (Fall 2003): 13-27.

April 23 – NO CLASS, ECA CONVENTION

April 28 – Student speech in Cyberspace

Case work:

- Tinker v. Des Moines Independent Community School District (1969)
- Beussink v. Woodland School District (E.D. Mo. 1998)
- J.S. v. Bethlehem Area School District (Pa. Comm. Ct. 2000)
- Emmett v. Kent School District No. 415 (W.D. Wash. 2000)

Commentary

- Student Press Law Center, “Legal Tips to Know Before You Post: A Guide to Maintaining an Off-Campus Web Sites,” 2008

April 30 – International Issues

Web work:

- Review eBay’s list of “Prohibited and Restricted Items” and “Rules about Intellectual Property”

Case work:

- In re Somm, Urteil des Amtsgericht München (May 28, 1998) (Ger.)
- League Against Racism and Antisemitism v. Yahoo! Inc. (County Court of Paris 2000)
- Yahoo! Inc. v. La Ligue Contre Le Racisme et L’Antisemitisme (N.D. Cal. 2001)

Commentary

- Jack Goldsmith and Timothy Wu, “Digital Borders,” Legal Affairs, January/February 2006

May 9 – FINAL EXAM (Saturday, 9 a.m.)

May 13 – GRADES POSTED (Wednesday, before noon)

CO259 CYBERLAW

HOW TO GET AN A IN CYBERLAW

SPRING 2009

After grades posted in May 2008, all students finishing in the top 10% of the class were invited to advise future students “How to Get an A in Cyberlaw.” The responses appear below (organized in the order they were received):

RESPONSE #1

In order to get an A you need to remember many cases and congressional acts for the exams. The best way to remember these cases is to pay attention in class. You can only miss three classes anyways so while you are there it is important to pay attention. If you can pay attention without taking notes that is fine because the lectures are on WebCT. However, I found it helpful to take notes in order to engage myself in the material. If you do this, studying for the exam will be much easier.

When it is time for exams you really need to sit down and make sure you know all the cases. Make sure you know what the case means in terms of precedent or in relation to the Congressional Act it is in response to. Some background information is also important. I found that flashcards were the best way to study. I wrote the name of the case and the title of the line of cases in which the case fell, (i.e. Student Free Speech in Schools or challenging CDA) on the front of the card and important background information, the decision, and any lasting importance the decision had on the back. Once you have written and studied the cards once or twice through it is a good idea to take the practice test. Afterwards focus on questions you did not get right.

– A & S ‘10

RESPONSE #2

I struggled when I was studying for my first Cyberlaw exam. I left it to late the night before the exam, which I thought would be enough time if I just pulled an all-nighter. But even though it was only 7 lectures to study, I soon realized it was just too much to take in in just one night. It’s not that the material is hard, it’s just that in order to do well on the tests, you have to remember small details about every case. So for the next two exams, I started studying about a week before the test. I would study just a little bit each day, but before I would start studying a new lecture or section, I would look over what I studied the day before. I would go through each lecture packet and follow along with the slides online. By the night before the exam, you’ve become so familiar with all the slides and lectures packets, that you feel you know all of the stories for each case and you don’t need to study as intensely. It is a lot of stuff to remember, but it’s true what Herbeck says, if you study in advance, it’s easy to get the A.

– A & S ‘09

RESPONSE #3

Attending class is very important. I found that taking brief notes and putting cases into my own words really helped. Then, a few days before each exam, I transferred the notes about each case onto flashcards. This made studying easier since I could separate the cards into “know it” and “don’t know it” piles. I tried to memorize the “stories” that go with the cases first (such as “the armband case”) and then it’s easier to remember the principles that go along with them.

– A & S ‘08

RESPONSE #4

I found it best to reread the handouts the day of the lecture and highlight key words and phrases. When it came time to study for the tests, I divided up the lectures into groups of three or four and studied one group per day, leaving an extra day before the exam to take the practice test and review anything I felt I needed to review. I reviewed the lecture slides with the handout in front of me, closely pairing the material in the slides to the sometimes more lengthy explanations in the handouts. I also

made study guides by myself of all the cases and key terms; usually three or four sentences to summarize the key points and facts.

– A & S '09

RESPONSE #5

The best advice I can give to Cyberlaw students is to make a study guide for each exam. Sometimes, the cases/legislation covered in class contain so much information that it becomes difficult to fit all of the facts onto index cards. Instead, I found it much easier (and more effective) to make a study guide of my own using the slides posted on WebCT as a guideline. Using this method, I would simply create my own study sheet by combing Professor Herbeck's slides from class with my own notes from his lectures. Not only was this easier and more time-efficient (since everything was being typed on my computer), but it also allowed me to stay organized as I could visually categorize the information using different headers, fonts and bullet points. (i.e., I took a general idea, such as "True Threats", and then comprised all of the pertinent court cases under this heading). Also, I know of a few students who worked together on a study guide through e-mails - dividing the information up equally and then compiling a complete study sheet. The upside to making your *own* study sheet, however, is that while you are typing up your outline, you are reviewing and studying at the same time!

– A & S '09

RESPONSE #6

For me, Cyberlaw was a hard class to take notes in. It was much easier to just follow along and listen. However, when the cases were being gone over in class, it was essential to take notes. All of the other material which was background to understand the cases wasn't important to take notes on, but very important to pay attention to. That and making a study guide for each test would be my advice for getting an A.

– A & S '11

RESPONSE #7

Cyberlaw is the third course I have taken with Professor Herbeck, and the following strategies proved to be successful for me. Perhaps the most significant piece of advice I would emphasize relates to test preparation - start early! The time required for adequate test preparation is significant, and although you may have the perception that it is too early to begin studying or preparing notes, you must realize that there is a sizable quantity of material to cover. Accomplishing a small amount of material each day is preferable to trying to cram all your study time into the night before the exam. (When Professor Herbeck states in class that it is not too early to begin studying, it is a good idea to take his suggestion. It is tempting to procrastinate, but starting in advance is really beneficial!)

Also, fully utilize the review sheet Professor Herbeck distributes in class. Many students prefer flash cards, but I found that compiling my own study guide aided in retaining the material. The study guide is undoubtedly the most helpful tool, and I organized the terms by concept, and the cases in chronological order. I incorporated the information from both my class notes and Professor Herbeck's slides. Organizing the cases and terms in this fashion aids in retention, since you can see the progression between them, and the manner in which the cases evolved. When compiling your study guide, especially focus on the reasons for the significance of the cases and terms - mere memorization is not the most effective strategy in a class such as Cyberlaw in which there is a great amount of material. (Possessing a true *understanding* of the cases, as opposed to a memorized list, is also beneficial for the final exam, which is cumulative and tests the material presented throughout the entire semester.) Finally, I used a highlighter or pencil to underline the key phrases in each case decision, which helped me associate that phrase with the case and remember the material more easily.

I hope these exam preparation tips are helpful! Although it may seem daunting, starting in advance will "pay off" in the end, and your grade will more than justify your effort. Good luck, and enjoy Cyberlaw!

– A & S '10