Law and the Internet

Academic Year: 2014-15, Hilary Term
Day and Time: Weeks 1-9, Day and time to be determined
Location: TBC

Course Providers:
Professor Viktor Mayer-Schönberger (VMS), Oxford Internet Institute, viktor.ms@oii.ox.ac.uk

Background
The legal system has a reputation for conservatism and resistance to change. The Internet, on the other hand, symbolizes rapid change in how humans acquire and disseminate information, and how they communicate. It is perhaps not surprising then that the Internet poses distinct challenges to the legal system, potentially even undermining its effectiveness. By the same token, the legal system is often accused of stifling innovation online, of limiting the Internet’s potential by subjecting it to outdated legal constraints.

As there has been a relentless move online of social, business, government and other relationships (and related transactions and disputes), questions are again being asked about whether there is something special, perhaps indeed transformative, about the Internet and its impact on law and legal institutions.

In this course we will look at three distinct challenges cyberspace may pose to the legal system: a rights challenge, a transactional challenge, and a structural challenge. We’ll explore each of these challenges, their implications, and likely consequences for the future trajectory of both cyberspace and the legal system.

Course Objectives
The course takes a closer look at the challenges posed by networked information technologies to societal institutions of governance. This involves two analytical steps: (a) understanding the challenges and limitations of conventional legal institutions on the Internet, especially those administered by the State, and (b) reinterpreting and reinventing these institutions in the context of the Internet.

Learning Outcomes
At the end of the course students will:
• Have a framework to conceptualize the governance debates in digitally networked environments
• Be able to assess critically the opportunities and limitations of both state and non-state legal institutions on the Internet
• Be able to think creatively about the normative challenges of the Internet and make this knowledge productive for policy analysis and design
Teaching Arrangements
The course will be taught during Hilary term in eight weekly classes, each consisting of a short lecture, class discussions, and occasional group exercises. The date, time and venue will be communicated to students during Michaelmas Term. Teaching will occur in weeks 1-4 and 6-9 of Hilary term.

Students are expected to have done the required readings prior to each session. Course providers will "cold call", i.e. call on students as part of class discussion.

Note
Students should note that over the course of the year, small changes may be made to the content, dates or teaching arrangements set out in this reading list, at the course provider's discretion. These changes will be communicated to students directly and will be noted on the internal course information website.

Formative Assessment
Students will be required to write one short (advised length: 3000 words) essay on any of the 8 topics covered. This essay will provide a means for students to obtain feedback on the progress they have achieved. This essay will be due in week 4 of Hilary Term and should be submitted through Plato.

Summative Assessment
For the purposes of formal assessment all students will be required to produce one 5000 words essay which must be submitted to the Examinations School by 12 noon of Monday of Week 1 of Trinity Term. The essay topics will be agreed with the course tutor and relate closely to the topics covered. There will be no final examination.

Submission of Summative Assessment
All coursework should be submitted in person to the Examinations School by the stated deadline. All coursework should be put in an envelope and must be addressed to The Chairman of Examiners for the MSc in Social Science of the Internet C/o The Clerk of Examination Schools, High Street. Students should also ensure they add the OII coversheet at the top of the coursework and that two copies of the coursework are submitted. An electronic copy will also need to be submitted to the department. Please note that all coursework will be marked anonymously and therefore only your candidate number is required on the coversheet.

Please note that work submitted after the deadline will be processed in the standard manner and, in addition, the late submission will be reported to the Proctors' Office. If a student is concerned that they will not meet the deadline they must contact their college office or examinations school for advice. For further information on submission of assessments to the examinations school please refer to http://www.admin.ox.ac.uk/schools/oxonly/submissions/index.shtml. For details on the regulations for late and non-submissions please refer to the Proctors website at http://www.admin.ox.ac.uk/proctors/info/pam/section9.shtml.

Any student failing this assessment will need to follow the rules set out in the OII Examining Conventions regarding re-submitting failed work.

Topics
1. Law and the Internet – How Cyberspace Challenges the Legal System
3. Rights Challenge: Information Privacy
4. Rights Challenge: Information Control beyond Rights?
5. Break
6. Process Challenge: A Wave of Transactions / Welcome Mr Coase!
7. Process Challenge: Dispute Resolution, the Courts and Access to Justice

Key to Readings
A reading list is given below for each class. Those items marked with an asterisk (*) are essential reading and MUST be read by all students in preparation for the class. Items that are not marked with an asterisk are additional readings that need only be consulted in the preparation for essays.

**Week 1: Law and the Internet – How Cyberspace Challenges the Legal System**

In the late 1990s, legal academics had a passionate debate about whether a “law of the Internet” made any more sense than a “law of the horse.” Others argued as to whether conventional laws were inapplicable or irrelevant in cyberspace or whether this was a further fallacy. More than a decade later, many of these early questions remain fundamentally unanswered, despite the fact that the Internet has pervaded many areas of our lives, transforming (to a greater or lesser extent) social and economic practices from e-commerce and copyright to online dating, democracy and the practice of law. This first session will give an overview of the course and the field and shed light on the fundamental question of this course: how does the Internet challenge the existing legal system?

* Mayer-Schönberger, Viktor


• *Information Law amid Bigger, Better Markets*, pp. 266

* Easterbrook, Frank H.


* Johnson, David R.


**Week 2: Rights Challenge: Intellectual Property in Cyberspace**

Intellectual property has been a major battleground in Internet law. This is hardly surprising given the rise in importance (and commercial value) of information through global digital networks, as well as the potential of digital tools to acquire, process, store, and disseminate digital information quickly and cheaply. In this session we take a hard look at the law and economics of copyright, how copyright law has been shaping the Internet landscape, and how the recent development of copyright law itself has been influenced by the digital revolution.

* Landes, William M.


• *pp. 37-70*

* Mayer-Schönberger, Viktor

Week 3: Rights Challenge: Information Privacy

Since Scott McNealy, then CEO of Sun Microsystems, declared in 1999: “You have zero privacy anyway. Get over it!”, there has been a huge increase in levels of interest in this subject not just on the part of regulators but also by ordinary Internet users concerned at how their personal information might be used by businesses and governments. Notwithstanding the apparent readiness of hundreds of millions of people to share often quite intimate information in online environments (for example, on social networking sites), privacy concerns, and specific issues such as data breaches and identity theft, are rarely out of the news.

This session looks at the likely future trajectory of privacy debates, rather than analyzing past battles. It looks at how the concept of privacy itself changes in an informational context.

  • Available at: http://www.paulschwartz.net/pdf/Schwartz-harvard-pdf.pdf

Laudon, Kenneth C.
* Samueelson, P

Week 4: Rights Challenge: Information Control beyond Rights?

Recently, and enabled by the Internet and our digital tools, new forms of production has emerged. Referred to as commons-based peer-production is offers an intriguing alternative paradigm for producing information goods. What are the features of peer production, and what is its impact on traditional copyright? Is peer production just a fad, limited to a small number of cases, leaving copyright largely intact, or a sign of some broader and deeper changes? In what way do legal systems evolve beyond traditional copyright or conventional data protection to react and incorporate some of the emerging paradigms of information governance?

  • pp. 35-90 & 413-29

  • pp. 257-27


* Cukier, Kenneth N. META: The Rise and Governance of Information About Information (Special Report Global Leaders 2010).
  • Available from course instructor.


Week 5: BREAK
Week 6: Process Challenge: A Wave of Transactions / Welcome Mr Coase!

The second challenge focuses on how the Internet has enabled a high volume of low value transactions to take place, often across jurisdictional borders. As conflicts among transacting parties arise, will the territorially based legal systems be able to cope for a situation they were not designed for, and if so how? Does it matter? What is the role of codified law compared to contractual arrangements? Will this dynamic influence what laws get enacted?

* Reidenberg, Joel
  • Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=267148

* Wallace, Jonathan
  Mangan, Mark
  • pp. 1-40

* Varian, Hal R.
  • Available at: http://www.sims.berkeley.edu/~hal/Papers/japan/

* Gillette, Clayton P.

Week 7: Process Challenge: Dispute Resolution, the Courts and Access to Justice

This week's discussion will explore the scope, potential, and limitations of Internet-based systems that seek to offer legal advice and resolve legal disputes. Historically, the main way to obtain legal advice has been through lawyers. But it is now possible for legal guidance to be offered online, and for legal documents to be automatically assembled on the Internet. The law is being codified electronically. Many legal processes are changing fundamentally, with impact on citizens as well as major organisations. In relation to dispute resolution, is a law court a place or a service? With advances in online dispute resolution and video conferencing, it is no longer clear that human beings need to congregate together in one physical location to resolve their legal differences. More, online legal services can help citizens avoid legal problems in the first place.

* Susskind, Richard
  • Chapters 6 & 7

* Katsh, Ethan
  Riffins, Janet
  Genn, Hazel
  Zeleznikoff, John
  Lodder, Arno R.

  • Information and a public inquiry, pp. 33-49

Links
www.cybersettle.com
www.moneyclaim.gov.uk
www.odr.info
Week 8: Structural Challenge: Who Governs How?

The third challenge is the structural one. Who makes the rules and laws of cyberspace? And who enforces them? What are the institutions of rule-making in cyberspace, and how do they interact with old-fashioned black letter law? How do we (and how should we) assess the success or failure of such emergent alternative institutions? Domain names and online virtual spaces offer intriguing case studies.

  - A Rape in Cyberspace; or, How an Evil Clown, a Haitian Trickster Spirit, Two Wizards, and a Cast of Dozens Turned a Database into a Society, pp. 237-261

* Geist, Michael

* Kur, Annette

Week 9: Structural Challenge: Is Code Law?

Lawrence Lessig famously said that laws are being replaced by software code in constraining human behavior online. If governance is indeed shifting from East Coast Code to West Coast Code, what are the implications? And is it? What is the role of technology? And that of law?

* Lessig, Lawrence
  - pp. 24-42 & 83-99

* Fischer, Claude F.
  - pp. 1-21

* Bijker, Wiebe E. Pinch, Thomas P.
  - Chapter 1: The Social Construction of Facts and Artifacts, pp. 17-50

* Joy, Bill

Please note: Option papers will only run if selected by at least four students.