Law and the Internet

Academic Year: 2015-16, Hilary Term  
Day and Time: Wednesdays 9:15-11:15am  
Location: Seminar Room  

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

Background  
Much has been written about emerging legal issues on the Internet. But most of these “novel” challenges are neither particularly novel, nor are they particularly interesting (except perhaps for the parties directly involved). It may get lawyers and legal academics excited, but won’t move the public at large (and the few exceptions – when much-liked online services are ordered offline or personal data is compromised – only seem to prove the general point). This does not warrant teaching a course about it (except at law schools, or except by instructors who can’t stop talking about the things they research about). So this options course is NOT about the latest and greatest legal issues online. Sorry.

Rather, the premise of this course is that the legal system itself – law as being a central social institution and fundamental innovation in our society – is challenged by what the Internet enables and what is happening online. In other words, we will investigate whether, to what extent and why law’s role in our society is diminishing, and what consequences this change affecting a core institution in our society may have.

We will look at three distinct ways the legal system is being threatened: a transactional challenge, a rights challenge, and a structural challenge. In the process of examining each of these three areas, we also will read, discuss and critique a number of the seminal and foundational texts in the field.

Course Objectives  
In this course we build a conceptual framework to understand traditional (and novel) rules and their role online, utilizing legal, economic, historic, and sociological analysis (and anything else that’s helpful). By understanding what is online, we will also sharpen our view on what ought to be online, helping us to develop a normative view of life online.

Learning Outcomes  
At the end of the course students will:
- Be able to judge what is a fundamental shift in societal institutions and values and what is just another boring legal tussle online
- Have a framework to conceptualize the debates about rules and rulers on the Internet
- Understand the normative needs in a exceedingly digital society, and who may be able to fulfill these needs (including identifying opportunities for innovation)
- Be able to think normatively

08/01/2016
Help save the legal system by reinventing it – should we conclude it deserves being saved

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. This is a fun and engaging course, but it may make your head spin around and require unconventional thinking.

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.

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 at COB on Friday in week 5 of Hilary Term.

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.ox.ac.uk/students/academic/exams/submission/. For details on the regulations for late and non-submissions please refer to the Proctors website at https://www.admin.ox.ac.uk/proctors/examinations/candidates/.

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 – From Early Visions to Reality
2. A Wave of Transactions / Welcome Mr Coase!
3. Intellectual Property in Cyberspace
4. Information Privacy
5. Break

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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 are entirely optional (but hopefully helpful).

Week 1: Law and the Internet – From Early Visions to Reality

When the Internet became a widespread phenomenon, legal scholars debated whether the global communication network would be a new space of human interaction outside the law, or at least challenging it. Going back to these first big debates about law and cyberspace helps us separate the wheat from the chafe.

* Barlow, John Perry


* Easterbrook, Frank H.


* Johnson, David R.

Post, David G.


Mayer-Schönberger, V.


Week 2: A Wave of Transactions / Welcome Mr Coase!

The Internet has enabled a huge increase in transborder direct-to-consumer commerce. It results in the first fundamental challenge of the legal system as we know it.

* Coase, R.


Coase, R.


Week 3: Intellectual Property in Cyberspace

Intellectual property laws are one way through which the legal system assigns control over a certain type of information. We need to understand its origin, structure and value to comprehend information rights more generally.

* Landes, William M.

Posner, Richard A.


Mayer-Schönberger,

Week 4: Information Privacy

Modern information privacy laws have an individual’s control over her personal data at their core. They are thereby mimicking intellectual property laws as control rules over information. How far can this analogy be taken?


Week 5: BREAK

Week 6: Information Control – Rights-based and Beyond

Should rights cover all information? What for? Are rights the only, or best way to enable information control?


Week 7: Geist v. Kur – The Challenge of Rule Application

Who adjudicates in cyberspace? Who applies and enforces rules? What institutions and organizations challenge and replace the legal system online? And how good are they? The jury is still out – but the debate has been raging. We take a prominent such debate as a springboard for our own discussion.


08/01/2016
Week 8: Who(se) rules online?

Perhaps the biggest normative power comes from the ability to establish rules. This does not change in the age of the Internet, but the identity of rule-makers may, leaving us with a third fundamental challenge. Or not?


Week 9: Reviving Law in the Data Age

The course ends with a twist. Law, revised and adapted, makes a surprising comeback. Will it last? Should it last? You’ll be the judge.


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