The Internet Governance & Regulation tutorial takes a closer look at the law and policy challenges of networked information technologies. The goal is to provide students with an in-depth understanding of the current struggles for control and ownership in digital media and equip them with the tools to analyze and assess these conflicts from a regulatory perspective.

The reading list has been compiled with a focus on two particular aspects:

- **Broad concept of regulation and governance**: Even though law has traditionally played an important role in the regulation of human behavior, it is not the only constraining force. The tutorial will recognize this fact by adopting a broad perspective that includes, but is not limited to, the analysis of law in the broader context of public policy.
- **Focus on the U.S. context**: Most cases and examples are taken from the U.S. context. Nevertheless, the underlying principles and problems are largely universal and can be applied in many other jurisdictions. We will occasionally cross-reference other jurisdictions by way of comparison.

Designed for students from a non-law and policy background, the tutorial takes up a unique challenge. First, it aims to provide students with an understanding of basic concepts and principles of regulation and governance. Second, it explores the social phenomenon of networked information technology. Third, it brings together these two strands to help students think independently and critically about Internet Governance & Regulation.

Students are required to participate in the 8 tutorials and prepare carefully. Based on the weekly readings, a total of 8 essays have to be written. Each essay must be e-mailed to the tutor the evening before the respective tutorial takes place. The essay question of the week will be sent to the students well in advance, often together with a selection of links to websites and puzzles relevant to the topic of the week. There is no final examination.

Readings are prioritized as follows: * = mandatory, (*) = important, but can be skipped if need be, [no label] = optional, but still interesting. If only sections of an article or book should be read, they are marked in **bold**.
Introductory Readings

These introductory readings should be helpful in clarifying some of the ideas and concepts the tutorial is based on. They are divided into two sections. The first section introduces some basic concepts and frameworks of regulation and governance from political science and legal theory. The second section lists three seminal works for understanding networked information technology and its implications for society.

A. Law, Regulation and Governance


Legal theorist Hart asks “What is law?,” and does not give an answer.


A piece on legal theory, in which Lessig proposes a framework for thinking about “regulation” in a comprehensive way.


U.S. Supreme Court judge Breyer gives an overview of justifications for regulation. As you will notice, his understanding of “regulation” differs from Lessig’s.


“Governance” from the perspective of a political scientist.

B. Networked Information Technology and its Impact on Society


A classic on all things digital and still a fascinating read—especially with the benefit of hindsight. Pages 11-20 capture the core, but read more if you are interested.


*Yochai Benkler, The Wealth of Networks* (2006), Chapter 3

Arguably one of the most talked-about books at the intersection of law, technology, and society at the moment. Even though some of the ideas may be difficult to understand at
this point, just browse through the book and try to read Chapter 3 to become familiar with what – in Benkler’s opinion – is the main socio-economic transformation brought about by networked information technology: a shift from consumers to users. We will get back to these ideas in the course of the tutorial.

In addition, to get first-hand experience of the Internet, try out at least the three following things (if you haven’t done so already):

1. Edit an article on Wikipedia.
2. Join Second Life or another (free) virtual world of your choice, create a character, and play.
3. Comment on five of your favorite blogs.
Topic 1: Conceptualizing “Cyberspace” from a Law and Policy Perspective – A Brief History

When the Internet gained traction in the mid-1990s, legal scholars and policy makers were struggling to integrate the emerging network of networks into their understanding of the world. How could this new sphere of communication that had so profound an impact on the ways we behave, communicate, and do business, be conceptualized from a law and policy perspective and what are the normative implications?

In this first session, we will start by going back in time and revisit some of the early approaches that still reverberate through the current debates on Internet governance & regulation. It may be helpful to look at these readings with two sets of questions in mind: a) How is the social phenomenon described? What metaphors are used? b) What are the normative consequences and models authors attach to these descriptions?


In the late 1990s, Lawrence Lessig prominently added a different perspective. He emphasized the normative role of technology and “code” for all kinds of computer-mediated communication and claimed: “code is law.”

*Lessig, CODE, AND OTHER LAWS OF CYBERSPACE 3-60 (1999)


What followed were more comprehensive theories that tried to grasp the social implications of computer-mediated communication and develop an appropriate governance model.


(*)Yochai Benkler, THE WEALTH OF NETWORKS 386-96 (2006) (an “institutional ecosystem” that can be divided into “three layers”)


**Sample essay questions:**

What exactly is the regulatory model *David Johnson & David Post* envision for “cyberspace”? Discuss.

Larry Lessig argues that “code is law.” Are you convinced?
**Topic 2: State Control and Private Enforcement – Internet Points of Control**

From the perspective of a traditional lawyer, one of the most obvious and pressing questions of Internet governance is the one of jurisdiction. How and by whom should whose laws be enforced in a medium that crosses physical borders and easily evades traditional instruments of state control?

In this session, we will have look at the problem of the proper reach of law and analyze responses by both state and non-state regulators. For a good overview of the jurisdictional challenges, see:


Given these jurisdictional dilemmas, state regulators quickly moved on to more sophisticated regulatory strategies. Instead of trying to catch those who actual cause the harm, they indirectly targeted those who were in a better position to do so: information intermediaries like Internet service providers, platform operators, software companies, etc.


Of course, regulators also realized that imposing unlimited liability on intermediaries would be counterproductive. One reaction was to create so-called “safe harbors” under Section 230 of the Communications Decency Act. The devil, however, lies as always in the details: under what conditions should the operator of an online platform be liable for third-party content?


Sample essay questions:

The plaintiff’s primary argument in *Dow Jones v. Gutnick* had focused on the spectre of “a publisher forced to consider every article it publishes on the World Wide Web against the defamation laws of every country from Afghanistan to Zimbabwe.” Discuss.

Based on your knowledge and interpretation of CDA 230, do you think the Wikimedia Foundation should be immune from legal claims based on defamatory content on its platform? Discuss and use the Seigenthaler case as an example.
Topic 3: Regulating Speech – Freedom of Expression and the Problem of Filtering

Every action on the Internet can be regarded as some form of speech that is protected by fundamental rights in national constitutions and international law around the world. Problems occur when governments or private actors interfere with this freedom of expression—and engage in a practice commonly called “censorship.” Networked information technology forces us to rethink our conventional understanding of free speech and its limits on both a theoretical and practical level.


*Ronald E. Deibert et al., ACCESS DENIED: THE PRACTICE AND POLICY OF GLOBAL INTERNET FILTERING (FORTHCOMING 2008) (skim through)


Sample essay questions:

Can there be legitimate Internet filtering? Discuss.

The proposed Global Online Freedom Act seeks to impose “minimum corporate standards” to promote online freedom in “designated Internet-restricting countries.” Discuss.
Topic 4: Copyright, Patents, and Other Exclusive Rights in Information

Intellectual property has been a major battleground in Internet governance and regulation. This is hardly surprising. While “property” is essentially the right to exclude, “intellectual property” is the right to exclude from the use of information. This is hard to maintain in environments where every copy is as good as the original and information can be reproduced at virtually no cost. In this session, we will critically examine the current regime of intellectual property rights in U.S. with a focus on copyright.


* Article I, Section 8, Clause 8 of the U.S. Constitution, http://www.law.cornell.edu/constitution/constitution.articlei.html#section8

* Title 17 of the U.S. Code, Sect. 101, 102, 103, 106, 107, http://www.law.cornell.edu/uscode/html/uscode17/usc_sup_01_17_01_10_1.html

* DMCA 512, (a)-(d), (g), (h), http://www.law.cornell.edu/uscode/17/usc_sec_17_00000512----000-.html

The discussion has been especially heated with regard to copyright and peer-to-peer file sharing:


A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001)

* MGM Studios, Inc. v. Grokster, Ltd. 545 U.S. 913 (2005) (as always with court decisions, try to grasp the main arguments and ideas and neglect the legal technicalities)


Two exemplary approaches from the extensive literature:


Some alternative approaches and critiques:


Sample essay questions:

Fauchart & v. Hippel show that, under certain circumstances, some of the goals pursued with an IP rights regime can be achieved without law. Could this be a model for the other industries, e.g. the software industry?

Briefly sketch Fisher's idea of an alternative compensation system and critically assess its potential and limits.
Topic 5: The Digital Person – Privacy, Identity, and Reputation

Informational privacy has bothered policy-makers around the world even before the Internet added a new dimension. Interestingly, the U.S. and the EU have adopted quite different regulatory approaches:


Protecting information privacy on the Internet is even more problematic. Not only leaves every move in digital environments a trace of data that is later likely to be searchable. On a social web, which depends on the active participation of many, the very notion of “personal” data is being challenged. What is public, what is private anymore?


Several approaches have been proposed in the literature—often, of course, with different aspects of the problem in mind:

*Kenneth C. Laudon, Markets and Privacy, 39 Communications of the ACM 92 (1996)*

*Pamela Samuelson, Privacy as Intellectual Property?, 52 Stanford L. Rev. 1125 (2000)*

*Jonathan Zittrain, The Future of the Internet – And How to Stop It (forthcoming 2008), Chapter 9*


Sample essay questions:

At the core of current privacy regulation both in the U.S. and the EU is the concept of “personal data.” In view of privacy concerns in the context of various Web 2.0 applications, do you think this conceptual basis can be maintained? Why or why not?

*Kenneth Laudon* proposes to grant property rights in personal data and establish a “National Information Market.” Discuss.
One of the core issues of Internet governance is network design. What network topology allows and fosters what kinds of uses? The arguably most renowned principle at the physical layer is the end-to-end principle, which has been subject of both academic inquiry and political struggles.


The end-to-end principle also plays an important role in the current debate on “network neutrality” in U.S. (tele-) communications policy.


Timothy Wu & Christopher S. Yoo, *Keeping the Internet Neutral?: Tim Wu and Christopher Yoo Debate*, 59 FEDERAL COMMUNICATIONS LAW JOURNAL (2007)


Sample essay questions:

Jonathan Zittrain argues on p. 2030 that “complete fidelity to end-to-end may cause users to embrace the digital equivalent of gated communities.” What does he mean by that? Do you agree?

“Neutrality” is somewhat of a buzzword at the moment: neutral search, neutral networks, technological neutrality, Wikipedia’s neutral point of view. What, in your view, should “neutral” mean with regard to technology?
Topic 7: Order without Law – Peer-production of Governance?

So far, we have mostly focused on state law and how it regulates behavior in cyberspace. This is obviously too limited a perspective. In various online communities, users have found ways to deal with social dilemmas themselves.


(*)James Grimmelmann, Virtual Worlds as Comparative Law, 47 NEW YORK LAW SCHOOL L. REV. 147 (2004)

David P. Baron, Private Ordering on the Internet: The eBay Community of Traders, Stanford University, Research Paper No. 1709


The extent of user participation and cooperation in many online activities brings up another question that is currently being examined: in how far may these new patterns of social production also transform traditional state government and rulemaking?


For a more critical stance on the potential of user participation in public policy-making and other areas, see:


Sample essay questions:

How would you describe the way the people on Lambda MOO dealt with Mr. Bungle: did they do “justice”? Did they “regulate”?
Beth Noveck describes one way of harnessing the “wisdom of crowds” for better policy-making with regard to patent review. What are the promises and pitfalls of such approaches? Can you envision other fields of application?
Topic 8: What Replicants Can Teach – Rights for Robots and Questions of Agency

In this last session, we will have a rather unconventional look at the future of regulation and technology. Strange as it may sound, various kinds of algorithms, engines, and machines already have a huge impact on our lives and the ways in which we exercise our freedoms. This has been a major theme for both science fiction and academic authors.

*Blade Runner (1982)

2001 – A Space Odyssey (1968)


Alan M. Turing, Computing Machinery and Intelligence, 59 MIND 433 (1950)


Also lawyers have started to think about the consequences of this development and the need for rethinking some fundamental doctrines of law: who is a legal person?


Lawrence Solum, Legal Personhood for Artificial Intelligences, 70 NORTH CAROLINA L. REV. 1231 (1992)

Even though a scenario of artificial intelligence taking over seems still far away, there are other contexts in which authoritative decision-making is already automatized to an extent that may demand novel protections.


Sample essay questions:

Gunther Teubner examines the question of granting rights to electronic agents. What exactly does he mean by “rights?” Are you convinced of his analysis?

Danielle Citron discusses the need to rethink due process guarantees in the light of automated administrative decision-making. Against this backdrop, how would you assess the risks imposed by privately run information aggregators, like reputation systems, recommendation systems, search engines?