

Fall 2020

HSS 404-001: Law in the Digital World

Kyle Riismandel

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HSS 404 – Law in the Digital World
Fall 2020

Professor: Dr. Kyle Riismandel

Time: Tuesday/Thursday 9-1020AM

Classroom: Online

Office: Cullimore Hall 326/Google Meet - <https://meet.google.com/hva-kimx-yhw>

Office Hours: I will be available each for appointments on Monday and Wednesday, 12-2PM.

Please sign up to meet via the link on Canvas. If you would like to meet but cannot during those times, please send me an email to arrange an alternate time.

COURSE DESCRIPTION:

This seminar course examines legal issues concerning digital technologies in America, both in the past and today. To better understand these technologies and their implications, students will produce original research that analyzes the relationship between law and the digital world putting changes to the law in the broader context of American history. We will analyze what it means to live in a digital world and how technology is part of how we learn, work, play, socialize, as well as the way Americans adapt to new digital technologies and their possible uses.

We will not cover all aspects of the digital world and the law. We will focus on six areas related to contemporary America:

- Accessibility
- Privacy
- Intellectual Property
- Democracy
- Vice
- Transhumanism

Course Goal	Assessment
Identify and understand key laws and practices related to digital technologies in American history	Reading and Class Participation Outline of Secondary Source Completion of Final Project Reading Quizzes Discussion Leadership
Identify, analyze, and deploy primary and secondary sources to make historical arguments.	Reading and Class Participation Outline of Secondary Source Completion of Final Project
Research, write, and verbally present historical arguments using primary source evidence	Reading and Class Participation Outline of Secondary Source Completion of Final Project Discussion Leadership
Be informed citizens who can understand and participate in contemporary debates about laws and regulations related to the digital world	Reading and Class Participation Outline of Secondary Source Completion of Final Project Reading Quizzes Discussion Leadership

COURSE TEXTS

All course readings are available via canvas.njit.edu. Please bring all readings to class.

ASSIGNMENTS

The point of the assignments is to practice skills and learn course material so doing the assignments on time is imperative as they will relate directly to class that week. However, if you fail to hand in an assignment when it is due, you may hand it in late for partial credit with no more than a penalty of 1/3 letter per day late. Further, you must complete all assignments to pass the course. Failure to do so can result an F for the course.

Class participation:

Students are expected to

1. Participate actively in all class discussions and activities
2. Be respectful to the instructor and their fellow classmates
3. Arrive to class on time
4. Stay focused on what is happening in our classroom not on chatting or using digital devices.

Further, participation will be assessed not just on quantity but also on quality. Quality participation demonstrates knowledge of the issues at hand, completion of that week's assignments, and a willingness to engage in critical assessment of course texts and lectures. The participation grade may also include pop quizzes and short writing assignments done in class.

I encourage students to check in with me over the course of the semester regarding their class participation performance. Further, do not wait to contact me if you are falling behind or having trouble understanding course content. Earlier is always better (I'm looking at you Seniors).

Recap Paper and Presentation:

You will be responsible for recapping one class during the semester. That means, for your chosen date, you will write a short paper (400-750 words) that will include the key analytical takeaways from a lecture and/or discussion. That means, you should articulate what we learned or now understand about that week's theme or topic as well as how it connects to the broader themes and ideas discussed to that point in the course. At the next class, you will start by presenting your recap to the class. You do not need to do a formal presentation. Rather, you should shortly summarize the main points of your paper. An assignment sheet with further instructions will be distributed in class and via Canvas.

Discussion Leaders:

As a discussion leader, you will complete a 400-750 word response paper, upload it to the appropriate Canvas link at least 24 hours before class, and open discussion with a question, statement, or both designed to spur conversation about that week's topic. An assignment sheet with further instructions will be distributed and made available on Canvas.

Final Paper:

The assignments in the class will be the building blocks of a research paper of YOUR choice. This paper will be a chance for you to apply the skills you learn throughout the semester to write

an 1800+ word paper analyzing a primary source or set of primary sources related to the law in the digital world in their historical context. Each step in completing the paper, from the paper proposal to the final draft, will be completed in consultation with the instructor as well as your peer cohort. Further instructions will be distributed throughout the semester to guide you in your work.

Final grades will be calculated as follows:

Discussion Leader	– 8%
Response Paper	– 8%
Recap	– 8%
Class Participation	– 15%
Final Paper	– 61%
Paper Proposal	– 6%
Outline and Bibliography	– 8%
Rough Draft	– 12%
Final Draft	– 25%

Course Policies

Attendance:

Students are expected to attend all course meetings on time unless receiving prior authorization. Missing class will not only adversely affect your class participation grade, but there will be screenings in class that will only be offered during that class period so do your best to attend. If you miss class to attend an NJIT sponsored event, to observe a religious holiday, or due to a documented illness, those absences will be excused. For these absences to count as excused, you must receive permission from the instructor in advance or provide a doctor's note (or other relevant note) in the case of sickness.

Classroom Conduct:

In this course, we welcome intellectual inquiry and thoughtful discussion of difficult questions but hate speech and disrespectful comments will not be tolerated. We must come to class with an open mind, a willingness to learn, and fundamental respect for the humanity of each person in the room and the historical actors we discuss.

Office hours/student appointments:

I will be available each for appointments on Monday and Wednesday, 12-2PM. Please sign up to meet via the link on Canvas. If you would like to meet but cannot during those times, please send me an email to arrange an alternate time.

Academic dishonesty:

Students are expected to obey the NJIT honor code, and I will enforce this code to its fullest extent. The goal of this course is to evaluate your understanding of course materials and ability to express that understanding. Cheating, plagiarizing or otherwise violating the code of academic integrity not only breaks the trust between professor and student but keeps you from learning course content and improving writing and critical thinking skills. I am here to help so if you are having trouble, do not cheat, ask me for help.

For the tenets of the code or for clarification of what constitutes plagiarism or cheating, please consult: <http://www.njit.edu/academics/honorcode.php>.

Generally speaking, it is a violation of the academic integrity code to:

- Use someone else's words or ideas without attribution
- Copy content from someone else's paper, quiz, or exam
- Pay for course assignments to be complete by someone else

Laptops and miscellaneous technology rules:

Students may use laptops in this course for class-related activities only. Essentially, you are in class approximately 3 hours a week. Please be present and prepared when you are here. If you would rather text or surf the internet, please do not come to class.

Students Requiring Accommodations:

Students who require accommodations should contact NJIT's Student Disability Services to help procure accommodations in completing coursework. The center can be found at <http://www.njit.edu/counseling/services/disabilities.php>.

Course Schedule

WEEK 1 – SEPT 1 – What is the Digital World? How do we study it?

TUESDAY: Intro/Course Expectations/The Digital World (bleep bloop)

THURSDAY: Studying Laws and Courts/Research Questions and Sources

Secondary Sources

- Roosevelt University, "The Parts of a Court Decision"
- Orin S. Kerr, "How to Read a Judicial Opinion: A Guide for New Law Students"
- Law Librarians' Society of Washington, D.C., "Quick Links and Sources to Court Opinions"
- *The Craft of Research*, "Chapter 3: From Topics to Questions"

WEEK 2 – SEPT 8 - ACCESSIBILITY

TUESDAY – NO CLASS/MONDAY SCHEDULE

THURSDAY: NET NEUTRALITY

Primary Sources

- Federal Communications Commission, "Restoring Internet Freedom" - <https://www.fcc.gov/restoring-internet-freedom>
- Ajit Pai, "On Restoring Internet Freedom Order Taking Effect" - <https://www.fcc.gov/document/chairman-pai-restoring-internet-freedom-order-taking-effect>
- Mignon Clyburn, "Dissenting Statement" - https://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1214/DOC-348256A1.pdf

Secondary Source

- *Wired*, "Guide to Net Neutrality" - <https://www.wired.com/story/guide-net-neutrality/>
 - Choose one of the links following the article and be prepared to discuss it
- Recommended – Angela Gilroy, "The Net Neutrality Debate: Access to Broadband Networks"

- This article covers the history of net neutrality rules, laws, and court cases

WEEK 3 – SEPT 15

TUESDAY: Monopoly

Primary Source

- *U.S. v. Microsoft Corporation* (Nov. 2002)

Secondary Source

- Franklin M. Fisher. "The IBM and Microsoft Cases: What's the Difference?" *The American Economic Review*, Vol. 90, No. 2, (May 2000), pgs. 180-183.

THURSDAY

Secondary Source

- Thomas M. Lenard, "Introduction: Antitrust and the Dynamics of Competition in High-Tech Industries," *Review of Industrial Organization*, Vol. 38, No. 4 (June 2011)
- "Legal and Economic Aspects of the Microsoft Case: Antitrust in the Information Age: PROMINENT SCHOLARS EXPLORE THE ISSUES," *Business Economics*, April 2000, Vol. 35, No. 2 (April 2000), pp. 45-53

WEEK 4 - SEPT 22: PRIVACY

TUESDAY: THE RIGHT TO BE FORGOTTEN

Primary Source

- European Union, *General Data Protections*, "Article 17: Right to Erasure"
<https://iapp.org/resources/article/the-eu-general-data-protection-regulation/#A17>

Secondary Source

- Meg Leta Jones, *Ctrl+Z: The Right to Be Forgotten*, (New York University Press, 2016), Ch. 2, pgs 55-80.

THURSDAY: SURVEILLANCE CAPITALISM

Secondary Source

- Shoshana Zuboff, "Big Other: Surveillance Capitalism and the Prospects of an Information Civilization," *Journal of Information Technology* (2015), 75-89

Further Reading (not required)

Primary Source

- *In re Google Assistant Privacy Litig.*, 2020 U.S. Dist. LEXIS 80971 (United States District Court for the Northern District of California, San Jose Division May 6, 2020, Filed)

Secondary Source

- Julie E. Cohen, "The Biopolitical Public Domain: The Legal Construction of the Surveillance Economy," *Philosophy & Technology* 31 (2018), 213-233

WEEK 5 – SEPT 29

TUESDAY: THE SOCIAL LIFE OF DNA

Primary Sources

- Ancestry.com, "Privacy Statement" -
<https://www.ancestry.com/cs/legal/privacystatement>
- AncestryDNA Testing, "Privacy Statement" -
<https://www.ancestry.com/cs/legal/PrivacyForAncestryDNATesting>
- Ancestry.com, "Setting the Record Straight: Ancestry and Your DNA" -

<https://blogs.ancestry.com/ancestry/2017/05/21/setting-the-record-straight-ancestry-and-your-dna/>

Secondary Source

- Christine Guest, “DNA and Law Enforcement: How the Use of Open Source DNA Databases Violates Privacy Rights”

THURSDAY: CASE STUDY: THE GOLDEN STATE KILLER

Secondary Sources

- Nila Bala, “Criminal Suspects Deserve Genetic Privacy, Too,” Slate.com, March 18, 2019 - <https://slate.com/technology/2019/03/genetic-genealogy-law-enforcement-suspects-dna-privacy-gedmatch.html>
- Jocelyn Kaiser, “We Will Find You: DNA Search Used to Nab Golden State Killer Can Home in on About 60% of White Americans” - <https://www.sciencemag.org/news/2018/10/we-will-find-you-dna-search-used-nab-golden-state-killer-can-home-about-60-white>
- Andrea Marks, “DNA Search Method that Caught Golden State Killer No Longer Available,” *Rolling Stone*, May 23, 2019 - <https://www.rollingstone.com/culture/culture-news/dna-search-method-that-caught-the-golden-state-killer-no-longer-available-839315/>

DUE: PROPOSAL, SEPT. 30TH 5PM

WEEK 6 – OCT 6: DEMOCRACY AND CITIZENSHIP

TUESDAY: ELECTION INTERFERENCE

Primary Source

- The Mueller Report, Executive Summaries I and II
- United States Senate, “Report of the Select Committee on Intelligence on Russian Active Measure Campaigns and Interference in the 2016 U.S. Election: Volume 5: Counterintelligence Threats and Vulnerabilities,” pp. i-xiv.

Secondary Source

- Julian E. Barnes and Charlie Savage, “8 Takeaways from the Senate Committee Report on Russian Interference,” *New York Times*, August 18, 2020 - <https://www.nytimes.com/2020/08/18/us/politics/trump-russia-senate.html?>

THURSDAY: GERRYMANDERING

Primary Source

- *Ruchov v. Common Cause* (2019)
- *Common Cause v. Lewis* (2019)

Secondary Sources

- FiveThirtyEight.com, “Gerrymandering 101: Parts 1 and 2” <https://fivethirtyeight.com/tag/the-gerrymandering-project/#main>
- Ian Millhiser, “The Cracks in the GOP’s Gerrymandering Firewall,” *Vox*, Sept. 11, 2019 - <https://www.vox.com/policy-and-politics/2019/9/11/20857934/republican-gerrymandering-north-carolina-michigan>
- Eric Petry, “How the Efficiency Gap Works,” Brennan Center for Justice, 1-4

WEEK 7 – OCT 13

TUESDAY: CRIMINAL JUSTICE

Secondary Source

- Andrea Nishi, “Privatizing Sentencing,” *Columbia Law Review*, Vol. 119, No. 6

(OCTOBER 2019), pp. 1671-1710
THURSDAY – NO CLASS WORK ON OUTLINES
DUE: OUTLINE OCT. 16TH – 5PM

WEEK 8 – OCT 20

TUESDAY: Outline Meetings

THURSDAY: Outline Meetings

WEEK 9 – OCT 27 – INTELLECTUAL PROPERTY

TUESDAY: THE SHARING ECONOMY

Secondary Source

- Cory Doctorow, *Information Doesn't Want to Be Free: Laws for the Internet Age*, (San Francisco, McSweeney's, 2014), pgs. 118-154.

THURSDAY: COPYRIGHT AND ALGORITHMIC REGULATION

Secondary Source

- Dan L. Burk, "Algorithmic Fair Use," *The University of Chicago Law Review*, Vol. 86, No. 2, Symposium: Personalized Law (March 2019), pp. 283-308

WEEK 10 – NOV 3 – VICE

TUESDAY: NO CLASS – VOTE!!!!!!!!!!!!!!

THURSDAY: Crime Online

Primary Source

- NATO Cooperative Cyber Defence Centre of Excellence, "Technical and Legal Overview of the TOR Anonymity Network" (2015)

Secondary Source

- Judith Aldridge and David Cecary-Hetu, "Not an 'eBay for Drugs': The Cypotomarket 'Silk Road' as a Paradigm Shifting Criminal Innovation"

WEEK 11 – NOV 10

TUESDAY: Drafting, Editing and Feedback

Secondary Source

- Anne Lamott, *Bird by Bird: Some Instructions on Writing and Life*, "Shitty First Drafts"

THURSDAY: BIOHACKING

Primary Source

- California State Legislature, "SB-180 Gene Therapy Kits: Advisory Notice and Labels" (2019-2020) -

https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB180

Secondary Sources

- John Conley, "A Lawyer's Guide to CRISPR Gene Editing" - <https://theprivacyreport.com/2019/03/28/a-lawyers-guide-to-crispr-gene-editing/>
- Mary Todd Bergman, "Perspectives on Gene Editing," January 11, 2019 - <https://today.law.harvard.edu/perspectives-on-gene-editing/>
- Michael A. Stramiello, "CRISPR: The New Frontier of Biotechnology Innovation" https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2017-18/january-february/crispr-new-frontier-biotechnology-innovation-digital-feature/

WEEK 12 – NOV. 17

TUESDAY: TBD

THURSDAY: OPEN OFFICE HOURS

WEEK 13 – NOV 24

TUESDAY: OPEN OFFICE HOURS

THURSDAY – NO CLASS – THANKSGIVING BREAK

DUE: ROUGH DRAFT – NOV. 23RD BY 5PM

WEEK 14 – DEC 1

TUESDAY: ARTIFICIAL INTELLIGENCE

Secondary Sources

- Sabine Gless, Emily Silverman, Thomas Weigend, "If Robots Cause Harm, Who Is to Blame? Self-Driving Cars and Criminal Liability," *New Criminal Law Review*, Vol. 19 No. 3, Summer 2016, pgs. 1-22.
- H: Matthew U. Scherer, "Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies," *Harvard Journal of Law & Technology*, V. 29, No. 2, Spring 2016, pgs. 353-400.

THURSDAY: VACCINES

WEEK 15 – DEC 8

TUESDAY; BIG TAKEAWAYS

THURSDAY: PAPER QUESTIONS

DUE: FINAL DRAFT DECEMBER 21ST BY 5PM