

**INTERNET LAW**  
**PubP 4803 – Fall 2008**

**CRN 88948      TR 12:05 – 1:25 pm**

*Army Office – Room 2*

Instructor: Lawrence Keller  
Office Hours: Immediately after  
class or by appointment

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**TEXT:** CyberLaw – Text and Cases, Thomson/South-Western (2<sup>nd</sup> ed. 2004). **Please bring your textbook to each class.** We will also have assigned supplemental readings of court decisions and articles that are available on line or on T-Square.

**NEWS LETTERS AND ON-LINE RESOURCES:** The Bureau of National Affairs (“BNA”), which publishes newsletters on law and public policy topics, offers a **free subscription** to its “Internet Law News.” I recommend that you subscribe to this newsletter. It provides news on the latest developments in Internet law, some of which we will discuss in class, as well as potential topics for your term paper. If you wish to subscribe, you may do so at <http://www.bna.com/ilaw/>.

Another resource for new and developing Internet related legal issues is available at GigaLaw.com Daily News - <http://www.gigalaw.com/news/index.html>.

There is also a website specifically devoted to “HyperLink and Search Engine Law News” - <http://www.linksandlaw.com/news.htm>. Although this site is updated infrequently, you might want to peruse this site when we study Internet issues concerning trademark and copyright law. You can also subscribe to a free newsletter from this site.

**COURSE DESCRIPTION AND LEARNING OBJECTIVES:** In a relatively short period of time, the Internet has had a tremendous impact on politics, culture, business and values. This course provides an overview of how this impact has been accommodated by the U.S. legal system, and how our laws have adapted to meet the societal, political and economic changes caused by the Internet. The course covers a broad range of Internet-related legal issues including, among possibly others, the following:

**Technology and the Law** – impact of technology, particularly the Internet, on the legal system and public policy;

**Jurisdictional Issues** – judicial/governmental authority over persons using, and activities conducted on, the Internet;

**Intellectual Property Rights** – legal and policy developments concerning the Internet’s effect on copyrights, trademarks, patents and trade secrets;

**E-commerce** – legal issues concerning on-line contracting and related business transactions;

**Internet Taxation** - issues concerning the application of sales and use taxes to Internet transactions and services;

**Privacy** – the effect of the Internet on privacy expectations, and common law and Constitutional rights to privacy;

**Internet Speech** – the interplay between obscenity and defamation on the Internet and First Amendment free speech guarantees:

**Information Security** – encryption and cryptography systems and their relation to privacy and national security issues;

**CyberCrimes** – hacking, distribution of viruses/worms, on-line gambling, cyberstalking, spamming, cyberterrorism, and issues under the First, Fourth and Fifth Amendments; and

**Internet Regulation** – regulatory status of the Internet, federal – state regulatory conflict, and regulation of Internet services.

This course should enable students to understand the impact of Internet technology on the law and public policy, the challenges faced by our legal system in addressing issues that cannot be readily categorized based on past experience, and the legal risks associated with conducting business and personal activities on the Internet. By the end of the course, students should be able to identify legal and policy issues that relate to Internet activity, and to analyze how those issues might be addressed by the courts, other branches of federal and state government.

**METHOD OF INSTRUCTION:** In addition to lecture, the class will include discussion of Internet-related legal issues, and analysis of problems contained in the assigned readings and in end-of-chapter case problems. Students will also be required to write a paper on an issue related to the course subject areas. **Although a particular student will be designated to prepare and answer each of the assigned case problems, all students should be prepared to discuss each day's assigned problems.**

Occasionally, students will be asked to present assigned readings and other material to the class. Students will also be called upon a number of times during the semester to participate in class discussion on the assigned reading material and on developing Internet law issues. All students are encouraged to voluntarily participate in class discussion.

## CLASS POLICIES

**ATTENDANCE:** Attendance is very important for success in this class, and will be an important component of your class participation grade as well as in awarding extra credit points towards your final grade. Students are expected to be present for each class, in their assigned seat, and prepared to participate in class discussion as explained above. **All absences will be considered unexcused absences unless they are for the following reasons which must be documented: (1) illness; (2)**

**death or illness in the family; (3) jury duty; or (4) religious holiday.** Please avoid being tardy or leaving early, both of which disrupt the learning process. As a courtesy, please let me know ahead of time if you must be absent from class, tardy or leaving early.

**DISABILITY OR SPECIAL NEEDS:** A student should let the instructor know if he or she has a disability or special need that requires accommodation.

**ACADEMIC HONESTY:** You will be held to the highest standards of integrity on tests, papers and all other written work. Among other things, **plagiarizing is strictly prohibited on any written work that you may submit in this course.** "Plagiarizing" is defined by Webster's as "to steal and pass off (the ideas or words of another) as one's own" or "use [another's production] without crediting the source." If caught plagiarizing, you will be dealt with according to the GT Academic Honor Code. Likewise, **cheating off of another person's test is a direct violation of the GT Academic Honor Code, and will be dealt with accordingly.** Additionally, **unauthorized use of any previous semester course materials**, such as tests and any other course work, **is prohibited in this course.** Using these materials will be considered a direct violation of academic policy and will be dealt with according to the GT Academic Honor Code. If you have any questions involving these or any other Academic Honor Code issues, please consult me or [www.honor.gatech.edu](http://www.honor.gatech.edu).

**MAKE-UP EXAMINATIONS:** Generally, make-up exams are **not allowed.** Whether or not a student will be allowed to take a make-up examination is within the discretion of the instructor. Except in the instance of a documented medical reason or family emergency, notice of an intended absence from an announced examination with a full explanation of a compelling reason must be given **prior** to the examination to be missed.

**LEGAL DISCLAIMER:** Any and all opinions or statements as to legal matters made by the instructor are for classroom purposes only, and are never to be taken or construed as dispensing legal advice. This includes conversations with students, whether during or outside class.

#### **MISCELLANEOUS POLICIES:**

- **Be punctual for class.** Tardy students miss course announcements and disrupt the learning process for other students. If you do arrive late, enter and take a seat quietly.
- Be courteous – turn off all cell phones and pagers, don't talk or whisper to others in class, or otherwise engage in behaviors that disrupt the instructor or your classmates.
- You may eat or drink in class if you can do so quietly.

### **ASSIGNMENTS AND EVALUATIVE CRITERIA**

**GRADE DETERMINATION:** Grades are based on **performance** as measured by exam results, assignments and class participation. Grades are not based on effort, interest, how busy you are, or other factors that might interfere with your class performance. I

anticipate assigning the following weights to exams, assignments and class participation (including attendance):

First Exam:	20%
Second Exam:	20%
Final Exam:	20%
Paper:	25%
Class Participation:	15%

Weighted percentage grades will be converted into letter grades as follows:

A	90 – 100
B	80 – 89
C	70 – 79
D	60 – 69
F	below 60

The course requires time and effort to master the legal terminology; and to understand the laws and policies we are studying, the interplay between these laws and policies and technology, their underlying logic and their impact on business and societal values. Don't expect to understand the course content instantly. Nor is it likely that you will be able to master the material from classroom discussion alone. **For most students, it will take substantial additional time and effort outside the classroom to attain the level of understanding and mastery expected by the course.**

**EXAMS:** There will be two in-term exams and one final exam. The first exam will be drawn from material covered since the start of the course, and the second exam will be drawn from material studied since the first exam. The final exam will test primarily the subject areas covered since the second exam; however, a few questions (no more than 20% of the total questions) will be drawn from material covered earlier in the course. Exams will be "closed book." However, **you can bring into the exam room and have on your desk a single 8 1/2 by 11 piece of paper. You may have on the paper (both sides if you like, and in any size type) anything that you think would be helpful to you during the exam,** such as summaries, notes, words of inspiration, etc.

**PAPER:** You are required to write a paper on an issue related to the topics studied in class. There is no prescribed length for the paper, but I expect that most papers will be approximately eight to ten pages, double spaced. **Papers are to be more than a summary of an issue or a description of an Internet related problem – the paper should contain an analysis of the issue or facts presented and, preferably, draw a conclusion based on that analysis. You must submit your paper topic to me for approval no later than Tuesday, September 9.** An outline is not necessary, but I would be happy to review any paper outline that you present to me. Papers will be graded on content and writing, as well as on substance; consequently, papers should be well-organized, tightly written and largely free of typos and grammatical, spelling and other errors. **Papers are due on Thursday, November 20.** Papers may be submitted earlier, but **late papers will not be accepted without the instructor's prior approval which may be withheld for any reason. If accepted, a late paper will be assessed a 3-point penalty for each day late.**

**CLASS PARTICIPATION (including attendance):** You will be graded on your preparation for, and participation in, class discussion and case problem review. A student will be assigned to take the lead in reviewing each case problem, and may be asked to present other material to the class, such as a supplemental reading contained in the assigned materials. Additionally, I will be calling on each student a number of times during the semester. Because there is often more than one way of looking at a legal issue, **you will not be graded on whether your answer is right or wrong, so long as your response shows that you have prepared for class** by reading the assigned material and by reviewing, and giving thought to, the assigned case problems before class. **You will lose ONE point from your class participation grade if you are called upon in class and you are not prepared to give an answer or offer a comment, as may be appropriate.** Additionally, students who have not prepared, or are inadequately prepared, for an assigned case problem, or other material they are assigned to present to the class, could lose up to FIVE points from their class participation grade for each occurrence. Students will lose THREE points from their class participation grade for each unexcused absence, as defined above, after the first TWO unexcused absences.

Students who volunteer during class discussion will gain points towards their class participation grade. Note, however, that while volunteering to participate in class discussions is strongly encouraged, you will not be penalized if you do not volunteer. Regardless of whether you volunteer to participate in class discussions or not, it is possible to get a 100% for class participation if you have no more than two unexcused absences, and you are prepared for your assigned case problem reviews and when called upon in class.

**EXTRA CREDIT:**

If you are absent no more than TWO times from class during the semester (including excused and/or unexcused absences), TWO extra points will be added to your final grade.

## TENTATIVE COURSE OUTLINE

Section and page numbers refer to the 2<sup>nd</sup> edition of the textbook. Case problems can be found at the end of each chapter. The course outline is tentative and is subject to change. Departures from the outline (e.g., additions, deletions, changes to due dates) as well as any corrections (typographical errors, wrong section or page numbers) will be announced in class. **You are responsible for all assigned readings whether or not they are discussed in class. You are not, however, responsible for the material in the optional readings except to the extent that concepts, ideas, facts, etc., from those sources are discussed in class.**

### ***Week of August 18***

#### **Course Introduction: Technology and the Law, What is Internet Law?**

CyberLaw, Ch. 1

Sommer, Joseph, "Against Cyberlaw," 15 *Berkeley Tech. L.J.* 1145 (2000), read only through section titled "The Meanings of Technology," available at <http://www.law.berkeley.edu/journals/btlj/articles/vol15/sommer.pdf>

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### ***Week of August 24***

#### **Jurisdiction of Courts over Internet Disputes, Personal Jurisdiction over Out-of-State Defendants, Enforcement of Foreign Court Judgments**

CyberLaw, Ch. 2; Case Problems 1 – 3, 5 (analyze this case problem as if it was being decided by a U.S. court)

Court Decision: *Ginsburg v. Dinicola*, Civil Action 06-RWZ, slip. op. (U.S.D.C. D. Mass. June 7, 2007), available at [www.thelen.com/tlu/GinsburgVDinicola.pdf](http://www.thelen.com/tlu/GinsburgVDinicola.pdf)

Court Decision: *Crummey v. Morgan*, 965 So.2d 497 (La. App. 1 Cir. 2007); **read opinion and dissent**; (omit material on page 2 beginning with sentence: "Defendants have not answered Crummey's petition . . ." through first two paragraphs under "DISCUSSION" on page 3); available on T-Square.

**Optional Reading:** For those who may be interested in reading an E-Bay jurisdiction case decided by the Georgia Court of Appeals, see *Aero Toy Store v. Grieves*, 631 S.E.2d 734 (Ga. App. 2006); available on T-Square

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### ***Week of September 1***

#### **September 1: Labor Day – No Class**

#### **Introduction to Intellectual Property: Trademark Basics, Domain Names, Anticybersquatting Consumer Protection Act**

CyberLaw, Ch. 3; Case Problems 1, 2, 3 (assume federal anti-dilution act applies, not Illinois), 4 (decide under Anti-Cyber Squatting Act) and 5 (decide under Uniform Domain Name Dispute Resolution Process)

Court Decision: *Taubman Company v. Webfeats*, 319 F.3d 770 (6<sup>th</sup> Cir. 2003); read through p. 6 only; **read through p. 6 only**, stopping before “2. The Remaining Injunctive Factors”; available on T-Square.

Court Decision: *Bosley Medical Institute, Inc. v. Kremer*, No. 04-55962, slip op. (U.S. Ct. App. 9<sup>th</sup> Cir. 2005); **read only through paragraph 10 on p. 3989**; available at [www.ca9.uscourts.gov/ca9/newopinions.nsf/3B0C93358B88F28D88256FD90056994B/\\$file/0455962.pdf](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/3B0C93358B88F28D88256FD90056994B/$file/0455962.pdf)

Court Decision: *North American Medical Corporation v. Axiom Worldwide, Inc.*, No. 07-11574 (U.S. Ct. App. 6<sup>th</sup> Cir. April 7, 2008); **read only through p. 12**; available at [www.ca11.uscourts.gov/opinions/ops/200711574.pdf](http://www.ca11.uscourts.gov/opinions/ops/200711574.pdf)

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## **Week of September 8**

### **Trademarks (con't)**

**Copyright: Basics: Theories of Copyright Liability; Limitations on Copyright Owners' Rights; Digital Millennium Copyright Act; Liability of ISPs; File Sharing and P2P Networks; *Grokster* Case and the Theory of Inducement, *Viacom v. YouTube* Litigation**

CyberLaw, Ch. 4; Case Problems 1 – 2, 4

*Viacom v. YouTube* – Viacom’s Complaint filed March 13, 2007, in U.S.D.C., S.D.N.Y, available at <http://online.wsj.com/public/resources/documents/ViacomYouTubeComplaint3-12-07.pdf>

Court Decision: *MGM v. Grokster*, 545 U.S. 913 (2005), available at [www.supremecourtus.gov/opinions/04pdf/04-480.pdf](http://www.supremecourtus.gov/opinions/04pdf/04-480.pdf)

**Optional Reading:** Samuelson, Pamela, “Legally Speaking: Did MGM Really Win the *Grokster* Case?” available at <http://www.ischool.berkeley.edu/~pam/papers/CACM%20SCT%20decides%20MGM.pdf>

**Optional Reading:** Court Decision: *Perfect 10, Inc. v. Google*, No. 06-55405, slip op. (U.S. Ct. App. 9<sup>th</sup> Cir. 2007); a long and detailed, but interesting, opinion; helpful as a review of copyright issues; if you understand this opinion, you understand most aspects of copyright law as applied to the Internet; available on T-Square.

***Week of September 15***

**Copyright (con't)**

**September 18 – PAPER TOPICS DUE**

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***Week of September 22***

**September 23 – FIRST EXAM (Chapters 1 – 4 and supplemental materials)**

**Patents and Trade Secrets: Basics; Business Method Patents; Business Practices as Trade Secrets; International Enforcement**

CyberLaw, Ch. 5

Gleick, James, "Patently Absurd," *New York Times Magazine* (March 12, 2000); republished at <http://www.around.com/patent.html>

**Optional Reading:** Fisher, William, *et al.*, "Business Method Patents Online," Internet Law Program, Berkman Center for Internet and Society, Harvard Law School, available at [http://cyber.law.harvard.edu/ilaw/mexico\\_2006\\_module\\_7\\_obmp](http://cyber.law.harvard.edu/ilaw/mexico_2006_module_7_obmp)

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***Week of September 29***

**Patents and Trade Secrets (con't)**

**E-Commerce: Online Contracting; Contract Basics; Uniform Computer Information Transaction Act; Uniform Electronic Transactions Act; Electronic Signatures; Click-Wrap, Shrink-Wrap, and Browse-Wrap Agreements**

CyberLaw, Ch. 6, through the top of p. 182; Case Problems 1, 2

**Optional Reading:** Moringiello, Juliet, "Signals, Assent and Internet Contracting," *Rutgers Law Review*, Vol. 57, p. 1307 (2005) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=859485#PaperDownload](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=859485#PaperDownload) (to download click on "Choose Download Location" near top of page and then click on one of the download icons)

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**Week of October 6**

**E-Commerce (con't)**

**Taxation Issues Related to E-Commerce: Requirements for Taxation of Out-of-State E-Business; Concept of *Tax Nexus*; Differences between Sales and Use Taxes as Related to E-Commerce; Internet Tax Freedom Act and Related Issues**

CyberLaw, Ch. 7, through p. 211; Case Problems 1, 2, 3, 4, 5

Court Decision: *St. Tammany Parish Tax Collector v. BarnesandNoble.com*, 481 F.Supp. 2d 575 (E.D.La. 2007); available on T-Square

Amazon v. New York State Department of Taxation and Finance, Amazon Complaint filed April 25, 2008, in N.Y. Supreme Ct., available at [www.heartland.org/Article.cfm?artId=23295](http://www.heartland.org/Article.cfm?artId=23295) (to download click on "Download Full Text (pdf)" icon)

**No Class – Thursday, October 9**

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**Week of October 13**

**Privacy: Constitutional and Common Law Sources of Privacy; Federal Privacy Laws; SPAM; Interception and Disclosure of Electronic Communications; Privacy and Cookies; Workplace Privacy; State Initiatives**

CyberLaw, Ch. 9, Case Problems 2, 3

Court Decision: *In Re Pharmatrak, Inc. Privacy Litigation*, 329 F.3d 9 (1st Cir. 2003), available at <http://www.ca1.uscourts.gov/pdf/opinions/02-2138-01A.pdf>

"CAN SPAM Act of 2003," *Wikipedia, the free encyclopedia*, available at [http://en.wikipedia.org/wiki/Can\\_Spam\\_Act\\_of\\_2003](http://en.wikipedia.org/wiki/Can_Spam_Act_of_2003)

**Optional Reading:** Lichtenstein, Stephen D., "Workplace Privacy - An Oxymoron," *Business Law Review*, vol. 35, 18, (2002), available at <http://euro.ecom.cmu.edu/program/courses/tcr840/2003/workplace.pdf>

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**Week of October 20**

**Privacy (con't)**

**October 23 - SECOND EXAM (Chapters 5, 6, 7 and 9, and supplemental materials)**

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**Week of October 27**

**Internet Speech – Obscenity: First Amendment Protections; Regulation of CyberPorn; Child Pornography; Children’s Access to Harmful Internet Material; Employee Access to Adult Web Sites**

CyberLaw, Ch. 10, Case Problems 1, 2, 3, 4

Court Decision: *U.S. v. Williams*, No. 06-694, slip op. (U.S. Sup. Ct. May 19, 2008); available at [www.supremecourt.us/opinions/07pdf/06-694.pdf](http://www.supremecourt.us/opinions/07pdf/06-694.pdf)

Raysman, Richard, and Brown, Peter, “COPA Litigation and Internet Content Regulation,” *New York Law Journal*, Vol. 237 - No. 68 (April 10, 2007), available at [http://www.thelen.com/resources/documents/041007\\_NYLJ.pdf](http://www.thelen.com/resources/documents/041007_NYLJ.pdf)

**Optional Reading:** Etzioni, Amitai, “On Protecting Children From Speech (Symposium: Do children have the same First Amendment rights as adults?),” *Chicago-Kent Law Review*, Vol. 79, No. 1, 6 (2004) available at [www.gwu.edu/~ccps/etzioni/A315.pdf](http://www.gwu.edu/~ccps/etzioni/A315.pdf)

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**Week of November 3**

**Internet Speech - Defamation: Common Law Tort of Defamation; Slander or Libel; Liability of On-Line Service Providers; Anonymous Speech; SLAPP Suits**

CyberLaw, Ch. 11, Case Problems 2, 3, 4, 5

Court Decision: *Chicago Lawyer’s Committee for Civil Rights Under Law v. Craigslist*, No. 07-1101, slip op. (U.S. Ct. App. 7<sup>th</sup> Cir. March 14, 2008), available at [www.ca7.uscourts.gov/fdocs/docs.fwx?submit=rss\\_sho&shofile=07-1101\\_021.pdf](http://www.ca7.uscourts.gov/fdocs/docs.fwx?submit=rss_sho&shofile=07-1101_021.pdf)

Court Decision: *Fair Housing Council of San Fernando Valley v. Roommates.com*, No. 04-56916, slip op. (U.S. Ct. App. 9<sup>th</sup> Cir. April 3, 2008); **read only through p. 3461, and pp. 3464 – 3465**, available on T-Square.

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**Week of November 10**

**Internet & Information Security: Challenges and Goals of Internet Security; Transactional Security Systems; First Amendment Issues; Regulating the Export of Cryptography Products; Fourth Amendment and Information Security; Internet and The USA Patriot Act; Fifth Amendment and Information Security**

CyberLaw Ch. 12, Case Problems 2, 4, 8

***Week of November 17***

**November 20 – PAPERS DUE**

**Internet & Computer Crime: Nature of Computer Crime; Role of Computers in Crime; Types of Internet Crime; Computer Forensics; Cyberbullying; International Computer Crime**

CyberLaw Ch. 13, Case Problems 1, 2, 3, 4, 5, 9

Denning, Dorothy E, “CyberTerrorism,” Testimony before the Special Oversight Panel on Terrorism Committee on Armed Services U.S. House of Representatives (May 23, 2000) available at <http://www.cs.georgetown.edu/%7Edenning/infosec/cyberterror.html>

Web site of the Computer Crime and Intellectual Property Section, U.S. Department of Justice, <http://www.usdoj.gov/criminal/cybercrime/index.html> (Read and be prepared to discuss DOJ press releases involving computer crime)

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***Week of November 24***

**Internet Regulation: Regulatory Status of the Internet; Federal – State Jurisdictional Conflict; Net Neutrality; Regulation of Internet Services – VoIP and IPTV**

Court Decision: National Cable Television Association v. Brand X Internet Services, 545 U.S. 967 (2005), available on T-Square.

Gilroy, Angela, “Network Neutrality: Background and Issues,” Congressional Research Service (May 16, 2006), available at <http://www.fas.org/sgp/crs/misc/RS22444.pdf>

Scott, Mark, Cooper, Mark and Kenney, Jeannine, “Why Consumers Demand Internet Freedom – Network Neutrality, Fact vs. Fiction,” Free Press, Consumer Federation of America and Consumers Union (May 2006), available at [http://www.freepress.net/docs/nn\\_fact\\_v\\_fiction\\_final.pdf](http://www.freepress.net/docs/nn_fact_v_fiction_final.pdf)

Court Decision (“Vonage I”): Vonage Holdings Corporation v. Minnesota Public Utilities Commission, Civil No. 03-5287, slip op. (U.S.D.C. D. Minn. October 16, 2003), available at <http://www.nysd.uscourts.gov/courtweb/pdf/D08MNXC/03-08475.PDF>

Court Decision (“Vonage II”): Minnesota Public Utilities Commission v. FCC, No. 05-1069, slip op. (U.S. Ct. App. 8<sup>th</sup> Cir. March 21, 2007), <http://www.ca8.uscourts.gov/opndir/07/03/051069P.pdf>

**Network Neutrality Lobbying Exercise**

**November 27: Thanksgiving – No Class**

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***Week of December 1***

**Internet Regulation (con't)**

**Catch-Up, Wrap-Up and Review**

**FINAL EXAM**  
**FRIDAY, December 12, 8 am**

(Chs. 10, 11, 12, 13, Internet Regulation and supplemental materials; approximately 20% of questions from prior material)