

Syllabus
John Marshall Law School
Electronic Commerce Law
IT 830 (2)

Day 1—Introduction to e-commerce and electronic business models

Jack L. Goldsmith, *Against Cyberanarchy*
Pages 17 (starting with section 2) through 20

Note: Regulation by Technological Construction
Pages 20 through 22

A Pluralist Approach to Regulation of Online Conduct
Pages 25 (starting with B) through 28
Pages 28 (starting with D) through 33

Regulatory Breach in a Borderless World: The Problem of Controlling Activity Based
Outside the Jurisdiction
Pages 38 through 43

Competition Policy and Cooperative Business Models
Pages 66 through 77

Day 2—Formation and operation of an e-commerce company

Note: Metatagging and Search Engines
Pages 95 through 97

Brookfield Communications, Inc. v. West Coast Entertainment
Pages 97 through 103

Brookfield Communications, Inc. v. West Coast Entertainment
Pages 133 and 134

Bihari v. Gross
Pages 134 through 138

Playboy Enterprises, Inc. v. Welles
Pages 138 through 145

Playboy Enterprises, Inc. v. Netscape Communications Corp.
Pages 145 through 149

Bally Total Fitness Holding Corp. v. Faber
Pages 154 through 157

Cardservices International, Inc. v. McGee
Pages 180 through 184

Notes and Questions
Pages 225 through 227

ICANN's Dispute Resolution Policy
Pages 233 through 235

Registering Domain Names as Trademarks
Pages 265 through 270

Day 3—Protecting the assets of an e-commerce company

A Brief Overview of Copyrights
Pages 631 through 638

Contributory Infringement
Pages 659 and 660

Notes and Questions
Pages 673 and 674

Notes and Questions
Page 680

Video Pipeline, Inc. v. Buena Vista Home Entertainment, Inc.
Pages 698 through 705

Databases and the Law of Copyright
Pages 764 and 765

Feist Publications v. Rural Telephone Service Co. (if necessary)
Pages 765 through 775

Notes and Questions
Pages 775 and 776

Protection for Databases Under State Law and the Problem of Federal Copyright Preemption
Pages 776 through 782

Sui Generis Protection for Databases
Pages 783 through 786

Notes and Questions
Pages 796 through 798

Mark Stefik and Alex Silverman, The Bit and the Pendulum: Balancing the Interests of Stakeholders in Digital Publishing
Pages 800 through 807

Notes and Questions
Pages 807 through 809

Notes and Questions
Pages 821 and 822

Patent Basics
Page 878 through 880

Software Patents
Pages 882 through 884

State Street Bank & Trust Co. v. Signature Financial Group, Inc.
Pages 885 through 891

Notes and Questions
Pages 891 through 893

Notes and Questions
Pages 895 and 896

Notes and Questions
Page 936

Day 4—E-commerce contracts

Senate Report 106-131 to accompany E-Sign
Pages 279 through 281

Notes & questions
Page 287 through 290

Shattuck v. Klotzbach
Pages 290 through 293

EDI contracts
Pages 293 through 295

Shrinkwrap and its online analogs
Pages 297 (starting with C) through 299

Notes and questions
Pages 318 and 319

Lan Systems, Inc. v. Netscout Service Level Corp.
Pages 319 through 327

Notes and questions
Pages 339 through 342

Bots
Pages 342 (starting with D) and 343

UETA
Pages 343 through 349

E-Sign
Pages 349 and 350

Stephen T. Middlebrook & John Muller, *Thoughts on Bots: The Emerging Law of Electronic Agents*
Pages 350 through 356

Suzanne Smed, *Intelligent Software Agents and Agency Law*
Pages 356 and 357

Notes and questions
Pages 357 and 358

Day 5—E-commerce contracts (cont'd)

In re Real Networks, Inc., Privacy Litigation
Pages 366 through 369

The Function of Signatures
Page 373

Digital signature technology
Pages 374 through 377 (only if needed)

Notes and questions
Pages 389 (starting with 4) and 390

In re Real Networks, Inc., Privacy Litigation
Pages 391 through 393

Notes and questions
Pages 406 and 407

Validation of shrinkwrap licenses
Pages 450 through 455

Self-help
Pages 455 and 456

Day 5—E-commerce contracts (cont'd)

Background; Personal Jurisdiction
Pages 467 through 469

Zippo Mfg. Co. v. Zippo Dot Com, Inc.
Pages 469 through 476

Notes and Questions
Pages 476 and 477

Notes and Questions
Pages 483 through 488

Panavision International, L.P. v. Toepfen
Pages 489 through 493

Notes and Questions
Pages 476 and 477

Notes and questions
Pages 493 through 498

Entering into Commercial Transactions via Online Communications
Pages 500 and 501

Notes and questions
Pages 509 through 512

Use of Computer Equipment Located in the Forum State
Pages 515 and 516

Notes and Questions
Pages 530 and 531

Jurisdiction by Contract: Forum-Selection Clauses
Pages 531 through 539

Day 6—Consumer protection; advertising; spam

Consumer protection online
Pages 412 and 413

Fraud-Facilitating Features of the Online Environment
Pages 416 through 420

Online advertising issues
Pages 423 through 437

Blurring of Advertising and Editorial Content
Pages 440 and 441

Notes and questions
Pages 441 and 442

Online sweepstakes
Pages 442 and 443 (including Notes and Questions)

eBay, Inc. v. Bidder's Edge, Inc.
Pages 991 through 1001

Notes and Questions
Page 1001

Register.com, Inc. v. Verio, Inc.
Pages 1001 through 1009

Notes and Questions
Page 1009

Spam
Pages 937 through 942

Notes and Questions
Pages 950 and 951

Notes and Questions
Pages 956 through 961

Legislative Approaches
Pages 961 through 970

Self-help
Pages 970 through 972

Media3 Technologies, LLC v. Mail Abuse Prevention System, LLC
Pages 972 through 976

Notes and Questions
Pages 976 and 977

Day 7—Privacy and security

What’s New About the Online Environment
Pages 550 through 552

Tensions Within the Idea of Privacy
Pages 554 through 558

Fair Information Practices
Pages 558 through 565

Undisclosed Collection of Information from Internet Users
Pages 565 through 573

Online Profiling
Page 573

Notes and questions
Pages 577 through 580

Online Privacy Policies: Uses and Abuses
Pages 580 through 584

Piercing the Veil of Online Anonymity
Page 584

Industry Self-Regulation via Codes of Conduct
Pages 594 through 599

Third-Party Certifications via Privacy Seals
Pages 599 through 604

Note: Platform for Privacy Preferences
Pages 608 and 609

Regulation
Page 610 (Introduction to EC Directive)

Children’s Privacy
Pages 623 through 628

Day 8—Dispute resolution and student presentations

Background on Alternative Dispute Resolution
Pages 1073 through 1078

ADR or ODR in Electronic Commerce
Pages 1078 through 1083

Notes and Questions
Pages 1088 and 1089

Arbitration via ODR

Pages 1089 through 1091

Third-Party Seal Programs

Page 1093

Payment Intermediaries: Chargebacks

Pages 1093 and 1094

Notes and Questions

Pages 1096 through 1098

Day 9—Electronic payments and student presentations

How Will Technology Affect Money?

Pages 1102 through 1105

Board of Governors Report

Pages 1106 through 1109

Notes and Questions

Page 1109

Credit Cards

Pages 1110 through 1112

Debit Cards

Pages 1112 through 1114

Notes and Questions

Pages 1114 and 1115

Prefatory Note to the Uniform Money Services Act

Pages 1116 through 1121

David E. Sorkin, Payment Methods for Consumer-to-Consumer Online Transactions

Pages 1124 through 1126

Micropayments

Pages 1129 through 1133

Notes and Questions

Page 1133

Notes and Questions

Pages 1136 and 1137

Day 10 – Taxation and student presentations

Taxation of Online Economic Activity

Pages 1139 and 1140

Notes and Questions

Pages 1146 through 1148

Sales and Use Taxes

Pages 1148 through 1152

Notes and Questions
Pages 1156 through 1158

Notes and Questions
Pages 1167 and 1168

The Burden of Collecting Sales and Use Tax
Pages 1169 and 1170

Notes and Questions
Pages 1178 and 1179

International Taxation Issues
Pages 1179 and 1180

Permanent Establishments and Tax Havens
Pages 1187 and 1188

Value Added Taxes on Sales of Digital Goods
Pages 1191 through 1193

Grades are based on three components—written work product (45%), day-to-day classroom participation (30%) and an oral presentation made to class (25%). Written work product will include up to five short assignments designed to emulate assignments that might be given out in a law firm, including memoranda and mark-ups of draft documents. Classroom participation requires an active contribution to classroom discussion and should be based on assigned readings, as well as additional materials found on the web and elsewhere. The oral presentation will be ten to fifteen minutes long and will be designed to give the remainder of the class an in-depth analysis of a particular topic. Background materials for each oral presentation should be submitted one week before the scheduled presentation to enable others to prepare. Topics need to be approved at least two weeks in advance.

Although the readings cover a number of areas of the legal framework within which e-commerce is conducted, the course is not intended as a general survey of a variety of legal issues. Instead, it will focus on the methodology and approach that a lawyer needs to employ whenever the lawyer represents an e-commerce company or a company that is contracting with an e-commerce company. As a result, as the class progresses, topics that are discussed and the reading materials may be adjusted to reflect current events and students' interests in and experience with e-commerce issues.

In accordance with JMLS policy classroom attendance is required, and more than two absences may result in the failure to meet minimum requirements for the completion of the course. It is also highly recommended that students make a special effort to attend when other students are making their oral presentations.