

## ACCESS TO KNOWLEDGE

Nicholas Bramble

Fall Semester 2011

### Course Description

*Access to Knowledge (21264). 2 or 3 units. Students will work on articles and research projects that promote innovation and democratic values through the design, implementation, and reform of rules relating to intellectual property, telecommunications, antitrust, the Internet and new media, online privacy, and other issues.*

*We are at a time of intense domestic and international debate with respect to laws and policies that shape the delivery of health care services, the design of new information technologies, international trade, access to education, opportunities for either civic engagement or repression, and sharing of research and culture around the globe. Questions arising from the application of existing legal and regulatory frameworks to new technologies, and vice versa, will provide rich source material for student projects and articles. Students will have the opportunity to receive detailed feedback on multiple drafts of an article. In addition, this course will offer opportunities for direct engagement with public interest organizations, attorneys, and governmental officials.*

*Paper or research project required, to be supplemented by doctrinal and theoretical readings. Possible projects include consulting on litigation, writing amicus briefs, drafting statutes, responding to FCC and FTC proceedings, providing counsel to startups, and taking part in Congressional hearings. Students may enroll in both the fall and spring term. Enrollment capped at twelve. N. Bramble.*

### Course Logistics & Expectations

Meets Wednesdays, 3:10pm-5:00pm, Room A432 (40 Ashmun Street).

Materials and readings available through YLS Inside, or email [nicholas.bramble@yale.edu](mailto:nicholas.bramble@yale.edu).

The A2K Practicum is offered as a two-credit course for students that attend each week and complete a ten- to fifteen-page writing project. A third credit may be awarded to students that complete a substantially longer writing project during the semester. There will be no final exam apart from the writing project.

The first several weeks of the semester will focus on background readings presenting essential concepts for understanding the theory and political economy of copyrights, patents, communications law, privacy, and other legislative and regulatory frameworks that affect the design of online spaces and information flow. The remaining weeks of the course will involve readings and discussions specific to each of the practicum projects, as well as case studies linking course concepts to broader legal and social problems. A description of this semester's practicum projects will be distributed during the first class and also posted to YLS Inside. Students wishing to work on a self-designed project should seek the instructors'

approval prior to the start of the term. Each project will be supervised by an Information Society Project fellow.

Aside from equipping students with a foundational knowledge of access to knowledge theory and concepts, the practicum will serve as a workshop for students' academic and/or advocacy projects, offering frequent feedback in a collegial and collaborative setting. Students will take turns presenting their evolving work in class, submitting materials for colleagues' review no later than Sunday evening. By Tuesday evening, students not presenting that week will return preliminary comments by email. These comments will assist the presenter in framing discussion during class time.

Students who have participated in the A2K Practicum in the past are welcome to take the class again and work on new projects.

### **WEEK 1:** What is "Access to Knowledge"? (Sept. 7)

The first week features a slim set of readings, on the assumption that some students will still be shopping for classes, and because only one half of the class time will be devoted to discussion of readings. The other half of class time will focus on explaining the structure of the class and describing the specific projects that students can choose among this semester.

- Jack Balkin, *What is Access to Knowledge?*, Balkinization (2006) (5 pages), <http://balkin.blogspot.com/2006/04/what-is-access-to-knowledge.html>
- Wikileaks FAQ (3 pages), <http://futureoftheinternet.org/wikileaks-cable-faq>
  - Optional: Radio Berkman, Wikileaks and the Information Wars [http://wilkins.law.harvard.edu/podcasts/mediaberkmán/radioberkmán/2010-12-09\\_004|ZLESSIG.mp3](http://wilkins.law.harvard.edu/podcasts/mediaberkmán/radioberkmán/2010-12-09_004|ZLESSIG.mp3)
- Yochai Benkler, *THE WEALTH OF NETWORKS* Ch. 2: Some Basic Economics of Information Production and Innovation 35-58 (24 pages), [http://www.benkler.org/Benkler\\_Wealth\\_Of\\_Networks\\_Chapter\\_2.pdf](http://www.benkler.org/Benkler_Wealth_Of_Networks_Chapter_2.pdf)
- Robert Darnton, *Google & the Future of Books*, <http://www.nybooks.com/articles/archives/2009/feb/12/google-the-future-of-books/?pagination=false> (6 pages)

### **WEEK 2:** What Does the Rise of the Internet Mean for Communication and Sharing of Information? (Sept. 14)

- Statutes:
  - Communications Decency Act, 47 U.S.C. § 230, <http://www.law.cornell.edu/uscode/47/230.html>
    - Optional: Danielle Citron, *Civil Rights in Our Information Age*, *THE OFFENSIVE INTERNET* 31-49 (ed. Martha Nussbaum 2010)
    - Optional: *Doe v. MySpace*, 528 F.3d 413 (5th Cir. 2008)
  - Digital Millennium Copyright Act, 17 U.S.C. §§ 512(c) & 1201, <http://www.law.cornell.edu/uscode/17/512.html> & <http://www.law.cornell.edu/uscode/17/1201.html>

- Jonathan Zittrain, *The Fourth Quadrant*, 78 FORD. L. REV. 2767 (2010) (15 pages), [http://www.fordhamlawreview.org/assets/pdfs/Vol\\_78/Zittrain\\_Vol\\_78\\_May.pdf](http://www.fordhamlawreview.org/assets/pdfs/Vol_78/Zittrain_Vol_78_May.pdf)
- Josiah Ober, DEMOCRACY AND KNOWLEDGE (2008), Ch. 1: Dispersed Knowledge and Public Action (30 pages), <http://press.princeton.edu/chapters/s8742.html>
- Hal Varian, *Computer-Mediated Transactions* (15 pages), <http://people.ischool.berkeley.edu/~hal/Papers/2010/cmt.pdf>
- Wikimedia Strategy, [http://strategy.wikimedia.org/wiki/Main\\_Page](http://strategy.wikimedia.org/wiki/Main_Page) (browse)

### WEEK 3: Shifting Political Economies of Copyright and Patent Law (Sept. 21)

- This American Life, *When Patents Attack* (2011), <http://www.thisamericanlife.org/radio-archives/episode/441/when-patents-attack> (listen ~ 50 mins)
- William Landes & Richard Posner, THE POLITICAL ECONOMY OF INTELLECTUAL PROPERTY (2004) pp. 2-27 (25 pages) [http://www.aci.org/docLib/20040608\\_Landes.pdf](http://www.aci.org/docLib/20040608_Landes.pdf)
- Amy Kapczynski, *The Access to Knowledge Mobilization and the New Politics of Intellectual Property*, 117 YALE L. J. 806-10, 820-59 (2008) (44 pages) <http://yalelawjournal.org/images/pdfs/642.pdf>
  - Optional: Tim Wu, *Copyright's Communications Policy*, 103 MICH. L. REV. 278, 343-56 (2005) (13 pages), <http://ssrn.com/abstract=532882>

### WEEK 4: Reconstruction of the Commons? (Sept. 28)

- James Boyle, *The Second Enclosure Movement and the Construction of the Public Domain*, 66 LAW AND CONTEMPORARY PROBLEMS 33-74 (2003) (40 pages), <http://www.law.duke.edu/pd/papers/boyle.pdf>
  - Optional: Nicholas Bramble and Bryan Choi, Brief of Yale Information Society Project Professors and Fellows, *Golan v. Holder* (S. Ct. 2011), <http://sblog.s3.amazonaws.com/wp-content/uploads/2011/07/10-545-tsac-Amici-Cuirae-Information-Society-Project.pdf>
- Mark Lemley, *Place and Cyberspace*, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=349760](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=349760)
- Arti Rai and James Boyle, Synthetic Biology: Caught Between Property Rights, the Public Domain, and the Commons, 5 PLOS BIOLOGY 389 (2007), <http://www.plosbiology.org/article/info:doi/10.1371/journal.pbio.0050058>
- GNU General Public License, Version 3 (5 pages) <http://www.gnu.org/licenses/gpl.html>

### WEEK 5: Governmental Interventions in the Design of Information and Communications Architectures (Oct. --)

- Optional: Attend Supreme Court argument in *Golan v. Holder*, Wed. Oct. 5
- Federal Communications Commission, *Open Internet Report and Order* 2-8, 27-58, 61-62, 77-81, *skim* 8-27 on background & 62-77 on jurisdiction (42 pages) [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2010/db1223/FCC-10-201A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2010/db1223/FCC-10-201A1.pdf)

- Complaint, *United States v. AT&T* (2011), <http://www.justice.gov/atr/cases/f274600/274613.pdf>
- Federal Trade Commission, *Protecting Consumer Privacy in an Era of Rapid Change* 1-2, 19-21, 39-68 (35 pages) <http://www.ftc.gov/os/2010/12/101201privacyreport.pdf>
- Open Government Directive, <http://www.whitehouse.gov/open/documents/open-government-directive> (6 pages)
  - Beth Noveck, Comments to Canadian Parliament, Committee on Access to Information, Privacy, and Ethics: <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5001510&Mode=1&Parl=40&Ses=3&Language=E#Int-3773814>
  - Open Government Partnership, Summary of July 12 meeting (browse), [http://www.opengovpartnership.org/downloads/OGP\\_July\\_12\\_Overall\\_Summary.DOC](http://www.opengovpartnership.org/downloads/OGP_July_12_Overall_Summary.DOC)

**WEEK 6:** International Regulation of Trade, Medicine, and Access to Information (Oct. 12)

- Nagla Rizk, ACCESS TO KNOWLEDGE: EGYPT, Introduction (15 pages)
- Margot Kaminski, *An Overview and the Evolution of the Anti-Counterfeiting Trade Agreement* 2-26 (25 pages), <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1019&context=research>.
- Lea Shaver, *The Right to Science and Culture* 1-11, 37-43 [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1354788](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1354788) (17 pages)
- National and Regional Court Judgments on Freedom of Information, <http://www.right2info.org/cases> (browse cases)

**WEEK 7:** Different Implications of Information Flow Re Civic Engagement and Opportunities for Repression (Oct. 19)

- Comments of The New America Foundation, Free Press, Electronic Frontier Foundation, Public Knowledge, Reporter Without Borders, American Civil Liberties Union, *Global Free Flow of Information on the Internet*, Department of Commerce (2010) (14 pages) [http://www.ntia.doc.gov/comments/100921457-0457-01/attachments/NAFetal\\_FreeFlowofInfoComments.pdf](http://www.ntia.doc.gov/comments/100921457-0457-01/attachments/NAFetal_FreeFlowofInfoComments.pdf)
- Rebecca MacKinnon, *Global Internet Freedom and the Rule of Law* testimony (2010) (12 pages) [http://rconversation.blogs.com/files/rm\\_sjc\\_2march2010.pdf](http://rconversation.blogs.com/files/rm_sjc_2march2010.pdf)
- Jack Goldsmith & Tim Wu, *Digital Borders*, LEGAL AFFAIRS (2006) (6 pages), [http://www.legalaffairs.org/issues/January-February-2006/feature\\_goldsmith\\_janfeb06.msp](http://www.legalaffairs.org/issues/January-February-2006/feature_goldsmith_janfeb06.msp)
- Christopher Slobogin, *Is the Fourth Amendment Relevant in a Technological Age?*, BROOKINGS GOVERNANCE STUDIES (2010) (22 pages) [http://www.brookings.edu/~media/Files/rc/papers/2010/1208\\_4th\\_amendment\\_slobogin/1208\\_4th\\_amendment\\_slobogin.pdf](http://www.brookings.edu/~media/Files/rc/papers/2010/1208_4th_amendment_slobogin/1208_4th_amendment_slobogin.pdf)
- Lawrence Lessig, *Against Transparency*, THE NEW REPUBLIC (2009) (11 pages) <http://www.tnr.com/print/article/books-and-arts/against-transparency>

NOTE: WEEKS 8 ONWARD will be oriented towards Project-Focused Readings. Readings for the remainder of the semester will be focused on the specific projects selected.

- When presenting, submit your reading materials no later than Sunday evening.
- Written comments on others' materials are due by Tuesday evening. Draft materials will be due in 3 stages:
  - Oct. 26 & Nov. 2: Students present detailed outlines/concept notes for early feedback.
  - Nov. 9 & 16: Students present a partial draft for feedback.
  - Nov. 30 & Dec. 7: Students present a substantially complete first draft for final feedback.

**WEEK 8:** Health Care and Innovation (Oct. 26)

- Students in **Group A** present detailed outlines & concept notes for early feedback.
- Stephen Bradley & James Weber, *The Pharmaceutical Industry: Challenges in the New Century* (Harvard Business School 2004) (25 pages)

**WEEK 9:** Evolving Standards of Privacy (Nov. 2)

- Students in **Group B** present detailed outlines & concept notes for early feedback.

**WEEK 10:** Workshop, Presentations, and Student-Determined Readings (Nov. 9)

- Students in **Group A** present partial drafts and key readings for feedback.

**WEEK 11:** Workshop, Presentations, and Student-Determined Readings (Nov. 16)

- Students in **Group B** present partial drafts and key readings for feedback.

\*\*\* Thanksgiving Recess -- No Class Meeting on Nov. 23 \*\*\*

**WEEK 12:** Workshop and Presentations (Nov. 30)

- Students in Group A present substantially complete drafts for feedback.

**WEEK 13:** Workshop and Presentations (Dec. 7)

- Students in Group B present substantially complete drafts for feedback.
- Review of papers and course themes; forward-looking thoughts