

# Workshop #5 (U.S.) Regulation, Policy, and Law

Comm 181F  
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# This Workshop

These workshops are self-paced overviews and information references that provide critical knowledge to help you succeed in this course.

This workshop covers theories of policy, law, and regulation that provide background for your course research project.

This workshop is based in part on material from:

Burton, R. and Marshall, P.D. (2003). *Web Theory: An Introduction*. New York: Routledge

# Policy and Regulation

Media law and policy are not “natural” nor are they solely the result of market forces. They are the result of a complex interaction of technology with political, cultural, social, and economic forces. Therefore, regulation and policy are not always rational or driven by the attributes of the technology that is being regulated or its uses.

Policy and regulation in the media was always historically based on how earlier public services were regulated.

Radio regulation was based on how public utilities were regulated and in turn has been used for television. Telegraph regulation was based on railroads and in turn formed the basis of regulating telephone service.

The internet confounds this tendency based on its unique history, properties, and the impact of modern economics and law.

Like telephone service, radio, and TV - the Federal Communications Commission (FCC) regulates the internet.

# Internet Law and Policy

The internet was originally based on telephone technology, so providers were governed by “common carrier” phone regulations which meant that companies had to allow access to their lines. This is why if you have DSL you may choose any Internet Service Provider (ISP) you wish.

However, cable companies lobbied to have themselves regulated as “data services” so they are not considered common carriers. This means they do **not** have to lease their lines. This is why if you have cable broadband you may **not** choose any ISP you wish, but must go with your cable provider as your ISP.

This creates a situation where the basic provision of broadband access is regulated under two distinct set of rules. The conflict over “Net Neutrality” (described later) rests on the FCC trying to bring cable companies into line with common carriers like ATT. If you add the service you get with your mobile provider (eg. Verizon) this involves an entire separate set of rules and regulations.

This is an aspect of convergence as services with different regulatory histories, laws, and policies converge and conflict complicating competition and regulation.

# Internet Law

Following the tradition of extending regulation from previous media - Congress enacted the “Communication Decency Act” in 1996 which broadly sought to restrict internet content based on the rules used for TV.

In *Reno v. ACLU* the Supreme Court struck down most of the CDA and extended First Amendment protection to the Internet similar to that of printed materials. This placed the internet in a unique position of an electronic service with broad free speech protections.

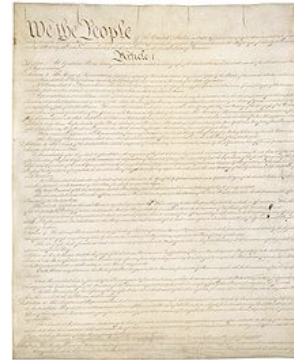
# Free Speech

Laws and regulations provide a theoretical framework in which media producers and consumers operate.

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” - *First Amendment, U.S. Constitution*

This is fundamentally different than any other nations policies.

Regulations are subsets or exclusions to this basic right.

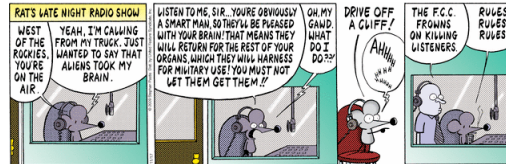


# Free Speech

The idea of free speech and reality of free of speech are different things.

All the First Amendment does is protect speech from “prior restraint” by the government - that is the government stopping you from speaking. It does nothing to protect you AFTER you have had your say or against non-governmental (corporate)restraint.

TV and Radio are considered scarce public resources and do not have full protection like print or the internet.





# Convergence

The central issue going forward is that as traditional mediums are absorbed into a broader communication infrastructure we call the internet - for example currently there are different rules for the same TV program depending whether you get it via broadcast TV, cable TV, mobile phone, or the web (eg Hulu) - at what point do the distinctions between mediums cease to have any practical meaning and which set of rules and regulations will wind up applying to this content?







# Net Neutrality

Net neutrality: the argument that broadband networks should allow any device, mode of communication, platforms, or content as long as it does not “damage or degrade” the network, so the user is in control.

The issue is duopoly broadband providers (Comcast, AT&T) effectively control your access to the internet. This creates conflict of interest. For example: Comcast is in the process of buying NBC/Universal. Comcast is the largest cable TV (95% of \$) and residential broadband provider in the US

Comcast would gain control of CNBC, Telemundo, Bravo, Syfy, Oxygen, USA Network, Universal Pictures, and NBC (34 stations) and their content. It already owns Fancast and would gain Hulu. If approved this would be the first move to a “one screen universe.”



The issue is that if your broadband provider has a vested interest in the content you consume, and it can make it easier for you to get to that content and harder for you to get to other content, it has a huge incentive to do so and no law prevents them.

Check out the New Neutrality Video on the wiki workshop page for a detailed explanation.

# Intellectual Property

“To promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” - *U.S. Constitution*

Intellectual “property” and the need to protect it is a factor of mass production/distribution. Infringement was previously limited by the cost of producing/distributing “physical” goods (books/tapes) and the need to make profit to pay for it.

This also allowed IP owners a foundation to seek redress.

TOM the DANCING BUG PRESENTS:

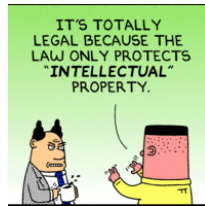


Please see the “Fairy Tale” video on the wiki page for an explanation of IP

# Intellectual Property

*Capitalism's Linguistic Turn*  
(Poster, 2001)

Shift from the production of items to the selling of items and training consumers to consume via advertising. From the manipulation of things to the manipulation of symbols.



Digital commodities have a logic that confounds the principles of capitalism at a very basic level. The economic principles of scarcity, marginal utility, supply and demand, and production for a market are all called into question.

Digital technology renders copying and distribution easy and cheap (if not free) while leaving the creator in possession of the original.



# Intellectual Property

Intellectual property and copyright have fundamentally changed with the Digital Millennium Copyright Act.

This treats digital materials as different. It makes everything that goes on the web automatically copyrighted (unless otherwise stated by the producer).

It also means that copying and distributing **without** financial gain is illegal.

If you upload a song and 10,000 people download it you may be sued for the lost profits as if every person who downloaded that song would have otherwise purchased it.



This is, of course, ridiculous. But it is still the law.

This is perfect example on how economic power and interests can trump technology and culture.

# Task

To earn credit you need to post a substantive 100+ word comment on this workshop's wiki page and complete the following tasks and bring them to class.

For the in class workshop think about how these concepts and ideas reflect, contradict, or interact with C5 in Castells and your own experiences with issues of law and policy. Intellectual property "theft" (music, film, software) online is a ongoing issue that costs the economy billions. Digital rights management, lawsuits, and new pay services have all failed to curtail this activity

1. Do you download music for "free" on file sharing networks or get copies of media from friends? If so, what is your rationale for "stealing" this music? If not, what have some of your friends said to justify this activity? Write down your/their rationale.

2. What could the media/government do to reduce or eliminate this type of activity? Come up with 3 ideas.

3. Teams will discuss and compare their tasks and prepare a 10 minute presentation on the topic of the workshop with the three best ideas from your team. This is not just a reading of each students task submission but a coherent discussion where the elements interact and support each other. One team will be chosen at random to present.

4. Turn in tasks sheets for credit.