

## REGULATED DIGITAL INDUSTRIES:

### THE LAW & POLICY OF COMMUNICATIONS NETWORKS AND PLATFORMS

M/Tu/W 215pm–325pm ▪ 170 Law Building *or* Zoom Meeting ID: tnarecha (Password: b3rk3l3y)

Prof. Narechania ▪ 689 Simon ▪ OH: W 330pm–530pm (500pm–530pm available for appointments)

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### COURSE DESCRIPTION

The telecommunications industry (including internet-related services) is one of the largest and most influential sectors of the economy. It is also the site of one our most complex legal regimes, blending features of administrative law, antitrust law, and constitutional law (encompassing questions ranging from free speech to federalism), among others. Should we require internet service providers to comply with net neutrality rules? What, if anything, should government do to ensure media representation of diverse voices? How should we regulate the content moderation practices of large platforms? How do copyright and accessibility concerns interact with video content platforms? And how do prior regulatory schemes inform modern legal practices? The answers to these questions directly impact the structure of the telecommunications industry, from the companies that build telephone and broadband infrastructure to providers of online social media platforms. More fundamentally, these questions implicate matters of distribution, efficiency, fairness, monopoly power, and the structure of government. This course examines these issues through a study of some of the foundational questions and modern conflicts in domestic (U.S.) telecommunications law and internet policy.

### LEARNING OUTCOMES

You will be expected to:

- gain knowledge and understanding of substantive U.S. telecommunications law and policy;
- engage in legal analysis, problem-solving, and reasoning;
- communicate—in writing and orally—key telecommunications law concepts; and
- use the law to solve real-world problems and to create a better society.

In particular, you will be expected to:

- identify and analyze justifications for regulatory interventions into telecommunications (and related) markets;
- understand the statutory (and concomitant regulatory) system governing various aspects of the telecommunications economy, including wireline telephone service, broadband internet access, cable television transmission, and spectrum;
- analyze complex policy problems in telecommunications and internet law, including network neutrality, interconnection, and online service provider liability;
- evaluate existing and proposed telecommunications regulations to address issues of fairness, discrimination, distribution, and total welfare.

### COURSE MATERIALS

We will use the following texts and materials in this course:

- NUECHTERLEIN & WEISER, *DIGITAL CROSSROADS* (2d ed. 2013) [DC];
- Narechania, *Regulated Digital Industries Reader* [RDIR]; and
- other supplemental materials, such as news articles, as are posted to bCourses [bC].

## **COURSE SCHEDULE**

We will meet on Monday, Tuesday, and Wednesday afternoons, from 215pm to 325pm, in 170 Law Building or, if virtual, in Zoom Meeting Room: **tnarecha** (password: **b3rk313y**).

Below is a tentative schedule for the course. For the first class, please come prepared to discuss Topic 1. Each topic is roughly congruent with one class session, though I may adjust the schedule as we move through the semester. Hence, dates, assignments, and readings are subject to change. You should generally prepare one complete syllabus assignment past the end of the previous class. And please check bCourses regularly to ensure that you have the most current schedule and information (though I will typically announce any updates or changes to the syllabus).

### ***Fundamentals***

1. Introductions: Syllabus & A Framework for the Course (January 10, 2022)  
RDIR: ii–vii (*skim*), 1–15; bC: Syllabus

#### Regulations and Regulators:

2. Justifying Regulation (January 11, 2022)  
DC: 3–17; RDIR: 16–19
3. Statutory and Institutional Structure (January 13, 2022)  
DC: 17–22; RDIR: 19–32

### ***Regulating Physical Networks***

#### Common Carrier (Wireline) Regulation:

#### Spectrum (Wireless) Regulation:

#### Cable Regulation:

### ***The Internet***

#### Internet Service:

#### Network Neutrality:

#### Internet Interconnection:

### ***Content***

#### Competition and Diversity Concerns:

#### Content, Copyright, and Control:

#### Content and Vertical Integration:

#### First Amendment Concerns:

Platform Policy:

***Back to Basics: Why Regulate? Who Regulates?***

## ASSESSMENTS AND EXAMINATIONS

### ***Grading and Examinations***

The grade you earn will be based primarily on *one final examination* (100 points), consisting of two parts:

- a limited open-book, short-answer (e.g., one-to-two sentences) portion consisting of 3-10 questions; and
- a limited open-book, essay portion consisting of 1-3 questions.

Professionalism, attendance, and high-quality participation (see details below) may serve as a tiebreaker for students who are at the border between grades. Note that high-*quality* participation and high-*quantity* participation are not the same: Students whose participation tends to drown out others' voices may be treated the same as students who do not participate at all.

## GENERAL POLICIES AND INFORMATION

### ***Course-Specific Policies***

Attendance and Participation: If, *for any reason*, you are not prepared to participate in class, you may drop a “space-out” note on the lectern *before the start of class*. (Or, for virtual classes only, you may email me prior to the start of class.) You will not be called on that day. You may exercise this option *up to eight times per semester*. No reason is required (or desired) for exercising this option, and your decision to do so will not count against you for any grading purposes. Otherwise, please come prepared to *each* class. Regular attendance is required even if you are using a space-out note. (If you must miss a class—in whole or in part—due to an unavoidable conflict, that absence will count as a space-out request. And please note that parents and guardians are welcome to bring their children to class in the event of a childcare disruption. I may do so myself!) You are responsible for tracking your own use of space-out notes. Any space-out request beyond the eight options described above will be treated, for grading purposes, as an unprepared participation (though I may make, in my sole discretion, exceptions for extenuating personal circumstances).

Laptops: You may use a laptop or other, similar device to access reading assignments during class and take notes. However, I encourage you to take handwritten notes. (Research suggests that most students are likely to better absorb information this way.) Using any computing device (including mobile phones) for non-class-related activities is *strictly prohibited*. This is not a paternalistic rule: It is an externality regulation. Your internet activity is likely distracting to your colleagues sitting near you. Moreover, if your internet activity affects your contributions to class, then our entire discussion suffers.

Class Recording: Our course lectures are not recorded, and I generally do not permit students to record lectures (except, of course, in the case of disability accommodations approved by Student Services). This is because the success of our class depends on active student participation—but research suggests that students are less likely to participate if they know their discussions are recorded. (I am obliged to disclose the fact of any general recording, though I need not and do not disclose when a class is recorded for reasons of a disability accommodation.) Moreover, many students (and instructors) have legitimate privacy

concerns regarding class recording. I may make, in my sole discretion, limited exceptions to this policy for extenuating class-wide circumstances, including for virtual and make-up classes.

Slides: The slides are signposts for our discussion, and they will rarely—if ever—contain everything you need to know about a subject to succeed in this class. Please plan to rely on your own notes, and not the course slides, for study and review. I will periodically post the slides on bCourses, usually after each major unit of material.

Office Hours & Course Questions: I will hold regular, open office hours on Wednesdays from 330pm–530pm. You may reserve a ten-minute appointment with me at 500pm, 510pm, or 520pm on Wednesdays using the sign-up sheet posted outside my office door (689 Simon). If no one is signed up for a private appointment during that time, my door will remain open during that time for continued drop-in conversations. And if these times do not work for your schedule, please email me to schedule a separate appointment. My availability is especially constrained this semester, but I will do my best to find a suitable time.

I am also happy to respond to course-related questions by email (at [tnarecha@law.berkeley.edu](mailto:tnarecha@law.berkeley.edu)), but only if each question is accompanied by your best attempt at a reasoned answer, as this helps me to identify the source of your question and to quickly craft a helpful response.

### ***Berkeley Law Policies***

Credit Hours: A “credit hour” at Berkeley Law is an amount of work that reasonably approximates three to four hours of work per week for 15 weeks, including a) classroom time, b) time spent preparing for class, c) time spent in review sessions and studying and taking, final exams, d) time spent researching, writing, and revising papers and other written work, and e) time spent preparing for and completing any other final project, presentation, or performance. For the purposes of these calculations, 50 minutes of classroom instruction counts as one hour, and the 15 weeks includes the exam period. You can expect to spend this amount of time per unit per week on in-class and out-of-class, course-related work as described above.

Accommodations: Students who need accommodations for disability, pregnancy, or religious observance, or want to discuss the implementation of their accommodations, including accommodated exams, should contact Kyle Valenti, Senior Director of Student Services as soon as possible.

Honor Code: The Academic Honor Code governs the conduct of all students during examinations and in all other academic and pre-professional activities at Berkeley Law. We expect students to adhere to this code scrupulously. If you have any questions about whether your conduct may violate the code, please contact your professor or the Dean of Students before you act. You may face severe consequences, including a failing grade in this class or removal from the program, and the Bar will receive notification of your conduct.

### ***Resources and Support***

Technology Help: You are entitled to general software support for your computer from the law school and certain free software downloads from UC Berkeley while an enrolled student. If you have issues with internet access or computer equipment required to participate in classes remotely, contact [studentcomputing@law.berkeley.edu](mailto:studentcomputing@law.berkeley.edu). Information, links, and instructions for many common computer/technical questions can be found in the law library’s online computing guide. For bCourses, Zoom, and technical support questions, please email [studentcomputing@law.berkeley.edu](mailto:studentcomputing@law.berkeley.edu) or you can use the Student Computing chat. In either case, someone will respond to you during regular business hours.

Research Questions: For research-related questions, please contact the reference librarians by filling out the reference request form on the law library's website. You may also reach the reference librarians during business hours by using the law library's chat service.

Economic Support: If you need economic, food, or housing support, you may find basic needs information at [basicneeds.berkeley.edu](http://basicneeds.berkeley.edu). You may be eligible for money to buy groceries via CalFresh or the Food Assistance Program. If you need food immediately, please visit the UC Berkeley Food Pantry.

I also typically keep snacks in my office. If you are hungry and need something to eat, you can come by and let me know. I am happy to share, no questions asked.

Sexual Harassment and Prohibited Conduct: The University of California is committed to creating and maintaining a community dedicated to the advancement, application, and transmission of knowledge and creative endeavors through academic excellence, where all individuals who participate in University programs and activities can work and learn together in an atmosphere free of harassment, exploitation, or intimidation. The University prohibits sexual violence and sexual harassment, retaliation, and other prohibited behavior that violates the law or University policy. The University will respond promptly to reports of such prohibited conduct and will take appropriate action to prevent, correct, and when necessary, to discipline behavior that violates the University's Sexual Violence and Sexual Harassment Policy. If you have further questions or concerns about reporting behavior related to sexual harassment, sexual violence, and/or protected category discrimination, please contact the Office for the Prevention of Harassment and Discrimination (OPHD) by phone 510-643-7985 or email [ask\\_ophd@berkeley.edu](mailto:ask_ophd@berkeley.edu). Moreover, the Confidential Advocates at the Path to Care Center provide can provide affirming, empowering, and confidential support for those that have experienced gendered violence, including sexual harassment, emotional abuse, dating, and intimate partner violence, sexual assault, stalking, and sexual exploitation. The Center can be reached by phone at (510) 642-1988.

## **A FINAL NOTE**

In order to be a great lawyer, you must be able to effectively engage with *all* sides of an argument. To help develop this skill, we will maintain an atmosphere in which we admit open discussion about the law and policy, in which we are open to considering new ideas, and in which we respect each other's opinions. We will practice respect, empathy, and patience in our class.