

Faculty of Law – McGill University

**Specialized Topics in Law 15: Cybersecurity and Privacy (3 credits)**

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LAWG 534 Sections 001 and 009

Fall 2017

Tuesdays 8h30-11h30

Room 316 NCDH

**GENERAL INFORMATION**


**Course description(s):**

*Here's the official course description:*

Internet legal issues are some of the most important and complex problems facing lawyers and scholars alike in the 21st century. The course will be divided into two parts. The first part will consist of a broad introduction to the legal issues facing the internet; these include intellectual property, jurisdiction, defamation, and more. Of course, even those topics touch on privacy matters; privacy colours everything on the internet. The second part of the course will focus on diving deeply into the legal questions surrounding online privacy and cybersecurity, with a particular interest in comparing the legal regimes of Canada, the United States and Europe, and how the regimes interact in the internet's world without borders.

Throughout the course we will take a practical approach to many of these questions, learning how the courts and the attorneys who practice in this area deal with these issues on a day to day basis.

*Here's the unofficial course description:*

We're gonna talk about legal implications of the internet and it's gonna be awesome 

**Assignments & evaluation:**

1. Final Essay: 75% of final grade
2. Participation (including presentation and one-page summary): 25% of final grade

**1. Final Essay (75%):**

An essay of 4000-5000 words to be submitted through MyCourses during the final exam period, specifically with the deadline **December 15<sup>th</sup> at 3:00 P.M.** Essays should be double-spaced in some standard font of 10-12 point size, you go right ahead and choose one. Comic sans is not acceptable and will result in your immediate epic fail.

The final essay will be on a topic of your choice that relates to the course materials, or other topic related to legal aspects of the internet. All essay topics must be approved in advance by the instructor. The deadline for submitting your topic (along with a one paragraph description of the topic) is indicated in the week by week outline below (spoiler alert: October 24) and can be submitted by paper or email at

[allen@allenmendelsohn.com](mailto:allen@allenmendelsohn.com), or through MyCourses. Essay topics may be adjusted after submission, following discussions with, and / or suggestions from, the instructor.

## **2. Participation – presentation, one-page summary and general participation (25% total)**

*Presentation / one-page summary (20%)* - Each class, one student (or two) will present / summarize the most important case(s) of the day (marked with a \*\* in the outline below). One student in each class (or two, depending on the numbers registered in the course) will present a newsworthy item relating to the internet and the potential legal implications thereof. Students are not expected to do any research into “the legal implications thereof”, but only to offer their instinctual reactions (though they are welcome to research). A schedule for these presentations will be available on a link from *MyCourses* for students to sign up. Presentations should be no more than 10 minutes in length. In conjunction with the presentation, students will summarize and / or comment on the case or newsworthy item (as applicable) in a one-page maximum (1.5 line spacing, maximum 12-point font) document to be submitted in paper form on the day of the class; or by email to [allen@allenmendelsohn.com](mailto:allen@allenmendelsohn.com) or through MyCourses no later than 3 P.M. on the day of class.

*General class participation (5%)* – The instructor wants to hear your thoughts in class. Students who are less comfortable speaking in class are invited to submit comments about the assigned readings in advance of class to [allen@allenmendelsohn.com](mailto:allen@allenmendelsohn.com), or tweet @almendelsohn during class, this will count as participation as well.

### **Access to the instructor:**

*Coordinates:* 514-931-0702, [allen@allenmendelsohn.com](mailto:allen@allenmendelsohn.com), @almendelsohn

*Office hours:* Right after class, Tuesdays 11:30-1:30, Room 420 NCDH; other times by appointment.

*Preferred method of communication:* [allen@allenmendelsohn.com](mailto:allen@allenmendelsohn.com)

### **Course materials:**

Please note that all the materials listed in the week by week outline below will be posted on *MyCourses*, as will this outline and any other necessary materials, including presentations and class recordings (I will audio record all classes). Certain materials may be copyrighted, so please do not share them with third parties.

You may also access all the publicly-available materials from links at [allenmendelsohn.com/mcgill](http://allenmendelsohn.com/mcgill), when I get around to updating it.

### **Suggested Online Resources:**

To keep abreast of developments in this field, I strongly suggest regular visits to the following blogs, written by the leading Canadian experts in internet and technology law, privacy, and cybersecurity:

<http://www.barrysookman.com/>

<http://www.michaelgeist.ca/>

<http://www.eloisegratton.com/>

<https://cybersecuritylaw.ca/>

Note that Barry Sookman has an excellent daily email newsletter you can sign up for (see the right-hand side of his home page). This will be a very useful resource for students doing their presentation / one-page summary on newsworthy internet law events.

## WEEK BY WEEK OUTLINE AND READINGS

Please note that the following schedule is subject to change, depending on the availability of certain guest speakers. (The guest speakers themselves are confirmed; certain dates have not yet been confirmed.)

### **September 5:**

Topic: “A Series of Tubes” – introduction to the internet and the technology behind it

Guest speaker: – Warren Wilansky, Founder and President, [Plank Multimedia Inc.](#)

Readings: None

### **September 12:**

Topic: Does Anyone Govern the Internet? A look at internet subject matter jurisdiction and net neutrality

Readings:

*Broadcasting Act*, S.C. c. 11, ss. 2-9,

*Telecommunications Act*, S.C. 1993, c. 38, ss. 2-7, 27

Section 230 of the *Communications Decency Act of 1996*, 47 U.S.C. § 230

CRTC *Public Notice CRTC 1999-197*, <http://crtc.gc.ca/eng/archive/1999/PB99-197.HTM>

CRTC *Telecom Regulatory Policy CRTC 2017-104*, <http://crtc.gc.ca/eng/archive/2017/2017-104.htm>

\*\*CRTC *Telecom Decision CRTC 2017-105*, <http://crtc.gc.ca/eng/archive/2017/2017-105.htm>

\*\* *Reference re Broadcasting Act*, 2012 SCC 4, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7989/index.do>

Supplemental readings:

“Freedom on the Net – Canada Country Report 2017”, Allen Mendelsohn for Freedom House

### **September 19:**

Topic: Hands Off My Stuff – Copyright (and other IP) on the Internet, and territorial jurisdiction and other preliminary matters

Readings:

*Copyright Act*, R.S.C., 1985, c. C-42, ss. 2,3, 27 [esp. subsections (2.3) and (2.4)], 29, 29.21, 29.22, 29.23, 41.1, 41.25, 41.26, 41.27

*Digital Millennium Copyright Act* - 17 U.S. Code § 512

\*\**Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, (aka the “Tariff-22 Case”) [2004] 2 S.C.R. 427, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2159/index.do>

\*\* *Voltage Pictures LLC v. John Doe*, 2014 FC 161, <http://bit.ly/2w5O0oS>

*ESA v. SOCAN*, 2012 SCC 34, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/9994/index.do>

*Douez v. Facebook*, 2017 SCC 33

Supplemental readings:

*Wesley dba MTLFREETV.com v Bell Canada et al*, 2017 FCA 55, <http://bit.ly/2nvkTod> and 2016 FC 612  
<https://www.canlii.org/en/ca/fct/doc/2016/2016fc612/2016fc612.html>

*Norwich Pharmacal Company & Ors v. Commissioners of Customs and Excise*, [1974] AC 133 (HL)  
(Judgment of Lord Reid only)

ICANN Uniform Domain Name Dispute Resolution Policy,  
<https://www.icann.org/resources/pages/policy-2012-02-25-en>

*Boaden Catering v Real Food*, 2016 ONSC 4098

**September 26:**

Topic: Introduction to Privacy and Data Protection Law in Canada

Readings:

*Personal Information Protection and Electronic Documents Act (“PIPEDA”)* S.C. 2000, c. 5, ss. 2-7  
PIPEDA Schedule 1 (the “10 Principles”)

*Privacy Act*, R.S.C., 1985, c. P-21, ss. 2-8, 12, 13

*Act Respecting the Protection of Personal Information in the Private Sector*, S.Q. chapter P-39.1, ss. 1-

\*\* *R. v. Spencer*, [2014] 2 SCR 212

<https://www.canlii.org/en/ca/scc/doc/2014/2014scc43/2014scc43.html>

Sample Website Privacy Policy (instructor drafted)

Supplemental Readings:

Bill C-59, <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-59/first-reading#enH2829>

**October 3:**

Topic: Surviving the Mean Tweets of Montreal – Defamation in the internet Age

Readings:

*Warman v. Wilkins Fournier*, 2011 ONSC 3023

*Olsen v. Facebook Inc.*, 2016 NSSC 155

\*\* *Grant v. Torstar Corp.*, 2009 SCC 61

\*\* *Canoë inc. c. Corriveau*, 2012 QCCA 109

Supplemental Readings:

*Prud'homme v. Prud'homme*, 2002 SCC 85

*Zeran v. AOL*, 129 F.3d 327 (4th Cir. 1997)

*R. v. Elliott*, 2016 ONCJ 35

**October 10:**

Topic: My Image is My Own – Rights to your image and reputation online and “revenge porn”

Readings:

“Online Reputation – What are they saying about me?” Discussion Paper prepared by the Policy and Research Group of the Office of the Privacy Commissioner of Canada

[https://www.priv.gc.ca/media/1810/or\\_201601\\_e.pdf](https://www.priv.gc.ca/media/1810/or_201601_e.pdf)

\*\* *Doe 464533 v. N.D.*, 2016 ONSC 541, <http://canlii.ca/t/gn23z>

*Doe v. N.D.*, 2016 ONSC 4920 (CanLII), <http://bit.ly/2oCQxj5>

*R. v. A.C.*, 2017 ONCJ 317, <http://canlii.ca/t/h42q9>

Supplemental Readings

*Aubry v Éditions Vice-Versa Inc* [1998] 1 S.C.R. 591

**October 17:**

**Faculty-wide Focus Week, no class. Go focus!**

**October 24:**

***Note: Deadline for submitting essay topics with one paragraph description.***

Topic: Introduction to Cybersecurity and Cybercrime

Guest speaker: – [Prof. Alana Maurushat](#), University of New South Wales

Readings: None

**October 31:**

Topic: Expression and Access to Justice in the Digital Age

Guest speaker: – [Prof. Karen Eltis](#), University of Ottawa

Readings:

\*\* *A.B. v. Bragg Communications Inc.*, 2012 SCC 46, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/10007/index.do>

Karen Eltis, “Courts, Litigants, and the Digital Age”, 2<sup>nd</sup> Ed., Intro, Chapters 1 and 3

**November 7:**

Topic: SPAM SPAM SPAM EGGS SAUSAGE AND SPAM – When selling you stuff online clashes with your privacy rights

Guest speaker: [Maître Eloïse Gratton](#), Borden Ladner Gervais and Université de Montréal

Readings:

Eloïse Gratton, "Personalization, Analytics, and Sponsored Services: The Challenges of Applying PIPEDA to Online Tracking and Profiling Activities", Canadian Journal of Law and Technology, Vol 8, No 2 (2010) "Canada's Anti-Spam Law" or "CASL", S.C. 2010, c. 23, ss. 1-13, 20 at <http://laws-lois.justice.gc.ca/eng/acts/E-1.6/FullText.html>

CASL Regulations <http://fightspam.gc.ca/eic/site/030.nsf/eng/00273.html>

\*\* *Compliance and Enforcement Decision CRTC 2017-65*, <http://www.crtc.gc.ca/eng/archive/2017/2017-65.htm>

Supplemental Readings:

Samuel E. Trosow, "The Internet of Things: Implications for Consumer Privacy under Canadian Law" (working paper)

**November 14:**

Topic: Call the Lawyers, the Data Has Been Breached!!! – Cybersecurity from the company side and cross-border data protection

Guest speaker: – Me [Kristian Brabander](#), McCarthy Tétrault

Readings:

*In Re: Ashley Madison Customer Data Security Breach*, Statement of Claim

\*\* *Schrems v. Data Protection Commissioner*, ECLI:EU:C:2015:650, <http://bit.ly/2w8MfaB>

Possible addition to second half:

Topic: Student's Choice Lecture!

What did we not cover this semester that you would have liked? In November, the instructor will open up an online anonymous suggestion box for students to propose lecture topics. A poll of the 3-4 best topics (as chosen by the instructor) will open for students to vote. The topic with the most votes is thus chosen for the Student's Choice Lecture; complete with assigned readings and a panicked instructor who has little to no idea what he's talking about. Some potential topic ideas to get you started:

*Blockchains and bitcoin and the future of (legal?) online money*

*Online life after death – legal heaven or hell?*

*Do emojis have probative value?*

Readings: TBD

**November 21:**

Topic: Forget Me Not? – the Right to Be Forgotten in Europe (and Canada?) and Introduction to European Data Protection

Readings:

Eloïse Gratton and Jules Polonetsky, "Droit à l'oubli: Canadian Perspective on the Global 'Right to be Forgotten' Debate", Colorado Technology Law Journal, Spring 2017

\*\**Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González*, CJEU, at <http://curia.europa.eu/juris/celex.jsf?celex=62012CJ0131&lang1=en&type=TXT&ancre=>

\*\* *Google Inc. v. Equustek Solutions Inc.*, 2017 SCC 34, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16701/index.do>

\*\* DIRECTIVE 95/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

Supplemental Readings:

*A.T. v. Globe24h.com*, 2017 FC 114 (CanLii), <http://bit.ly/2oalk9l>.

*Google Inc. V. Equustek Solutions Inc.*, Case 5:17-cv-04207 Complaint, U.S. District Court, Northern District of California, available at <https://assets.documentcloud.org/documents/3900043/Google-v-Equustek-Complaint.pdf>

**November 28:**

Topic: We did it for the lulz - Cybersecurity from the hackers' perspective

Guest speaker: – Prof. [Gabriella Coleman](#), McGill University.

Readings:

Gabriella Coleman, “Anonymous in Context: The Politics and Power behind the Mask”, The Centre for International Governance Innovation (CIGI)

Gabriella Coleman, “Hacker, Hoaxer, Whistleblower, Spy - The Many Faces of Anonymous”, Epilogue

Gabriella Coleman, “The Public Interest Hack”, <http://limn.it/the-public-interest-hack/>

## MCGILL POLICY STATEMENTS

Please note the following important statements of policy from the University (which the instructor agrees with 100%!):

**Academic Integrity:**

***McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures (see [www.mcgill.ca/students/srr/honest/](http://www.mcgill.ca/students/srr/honest/) for more information).***

**Language of Submitted Work**

***In accord with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded.***

In addition, please note the following:

**Student Support**

If, during the course of the year, you encounter any problem (academic or personal) that affects your studies, please do not hesitate to contact the Student Affairs Office ([SAO.Law@mcgill.ca](mailto:SAO.Law@mcgill.ca)) and request an appointment with a Student Advisor.

**Extensions**

Assignments and papers must be submitted by the deadlines indicated. An extension may be granted for written work if you are unable to submit by the assigned deadline due to medical or analogous circumstances. Please contact the SAO directly via email [SAO.law@mcgill.ca](mailto:SAO.law@mcgill.ca) to request approval.

**Academic Accommodations**

If you believe that you may require an academic accommodation during this course, please do not hesitate to discuss them with Nancy Czemmell, Director (Student Life and Learning) ([Nancy.Czemmell2@mcgill.ca](mailto:Nancy.Czemmell2@mcgill.ca)), and the [Office for Students with Disabilities](#), 514-398-6009.