

Faculty of Law – McGill University

Specialized Topics in Law 15: The Internet and Privacy (3 credits)

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LAWG 534 Sections 001 and 009
Fall 2018
Tuesdays 11h30-14h30
NCDH Room 316

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 is (roughly) divided into two parts. The first part consists of a broad introduction to the legal issues facing the internet; these include intellectual property, jurisdiction, defamation, net neutrality, 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, 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 two-page comment): 25% of final grade

1. Final Essay (75%):

An essay of 4000-5000 words properly sourced and footnoted according to the McGill style guide, to be submitted via email to the instructor at allen@allenmendelsohn.com, with a cc to saoassignments.law@mcgill.ca, during the final exam period, no later than **December 17th, at 3:00 PM**. 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 and / or table of contents, along with 3 bibliographic references) is indicated in the week by week outline below

(spoiler alert, October 23) and should be submitted by email to allen@allenmendelsohn.com. Essay topics may be adjusted after submission, following discussions with, and / or suggestions from, the instructor, or even if you just change your mind (but a new topic will have to be approved anew).

2. Participation – presentation, two-page comment and general participation (25% total)

Presentation and two-page comment (10% each) - 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 <http://allenmendelsohn.com/mcgill> for students to sign up. Presentations should be no more than 10 minutes in length.

In conjunction with the presentation, students will comment on the case or newsworthy item (as applicable) in a two-page maximum (double-spaced, maximum 12-point font) document. The comment shall be submitted by email to allen@allenmendelsohn.com no later than 3 P.M. on the Friday of the week of your presentation. The comment should briefly summarize your case or news item, but should focus on your original thoughts about same.

A European student who wishes to present the GDPR (see Class 8) will present for up to 20 minutes but be exempt from the two-page comment, their presentation will count for 20%.

General class participation (5%) – The instructor wants to hear your thoughts in class. This is a seminar, dammit! 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, or tweet @almendelsohn during class, this will count as participation as well.

Access to the instructor:

Coordinates: 514-931-0702, allen@allenmendelsohn.com, @almendelsohn

Office hours: Tuesdays 10h30-11h30 and Tuesdays 14h30-15h30 (i.e. the hour before and the hour after class). Location TBD.

Preferred method of communication: allen@allenmendelsohn.com

Course materials:

Please note that all the materials listed in the week by week outline below will be posted at <http://allenmendelsohn.com/mcgill>, 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.

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 and comment 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, thus the order of topics, is subject to change.)

Class 1: (September 4)

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

Guest speaker: – Steve Bissonnette, Managing Partner, [Plank Multimedia Inc.](#)

Readings: None

Supplemental readings:

“Freedom on the Net – Canada Country Report 2018”, Allen Mendelsohn for Freedom House (draft version) (does not need to be read before class at all)

Class 2: (September 11)

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:

Association canadienne des télécommunications sans fil c. Procureure générale du Québec, 2018 QCCS 3159 (CanLII), <http://bit.ly/2BFrabw>

Class 3: (September 18)

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/2w500oS>

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

** *Haaretz.com v. Goldhar*, 2018 SCC 28

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

Class 4: (September 25)

(Finishing previous classes)

Class 5: (October 2)

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”)

Guidelines for obtaining meaningful consent, OPC, https://www.priv.gc.ca/en/privacy-topics/collecting-personal-information/consent/gl_omc_201805/

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. 1-17

** *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>

Class 6: (October 9)

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

Haaretz.com v. Goldhar, 2018 SCC 28

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

1704604 Ontario Ltd. v. Pointes Protection Association, 2018 ONCA 685, <http://bit.ly/2N3hjkp>

NOTE: No class October 16 because of McGill Law Focus Week. GO FOCUS! (and maybe work on your essay topic if you haven't yet)

Class 7: (October 23)

Note: Deadline for submitting essay topics, with one paragraph description of the topic and / or table of contents, along with 3 bibliographic references.

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>

Compliance and Enforcement Decision CRTC 2017-367

Supplemental Readings:

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

Class 8: (October 30)

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

** *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

Vanderveen v Waterbridge Media Inc., 2017 CanLII 77435 (ON SCSM) <http://bit.ly/2EGzKrJ>

Class 9: (November 6)

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

Readings:

Draft OPC Position on Online Reputation, January 28, 2018, <http://bit.ly/2Hu0M39>

***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>

** *General Data Protection Regulation* (“GDPR”) (Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC), <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=en>

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

Supplemental Readings:

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

Google Inc. V. Equustek Solutions Inc., U.S. District Court, Northern District of California, 5:17-cv-04207-EJD, <https://www.scribd.com/document/363385175/Equustek-CA>

Directive 95/46/EC of The European Parliament and Of The Council

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

Class 10: (November 13)

Topic 1: Litigating in the Information Technology and Internet Spheres

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

Readings:

None

Topic 2: 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”, 2nd Ed., Intro, Chapters 1 and 3

“Inadvertently Appointing Digital Judges? A Canadian Perspective on Restricting Speech and Social Media”, Karen Eltis, at <https://csrcl.huji.ac.il/people/inadvertently-appointing-digital-judges-canadian-perspective-restricting-speech-and>

Class 11: (November 20)

Topic 1: Call the lawyers – the data has been breached!

Guest speaker: – Maître [Antoine Aylwin](#), Partner and Chief Privacy Officer, Fasken

Readings:

None

Topic 2: Introduction to the substantive law of cybercrime in Canada

Readings:

Treaty Number 185 of the Council of Europe (“Budapest Convention”), <http://bit.ly/2Cy9I3S>
Criminal Code ss. 342.1, 430(1.1)

** *R. c. Parent*, 2012 QCCA 1653, <http://canlii.ca/t/fsrp3>

Mr. Robot, Season 1 Episode 1 (pre-credits sequence), to be shown in class

Class 12: (November 27)

Topic 1: Working on a (block)chain gang – The legal ramifications of Cryptocurrency and the Blockchain

Guest speaker: – Maître [Jillian Friedman](#), Leader, Blockchain Solutions at National Bank of Canada.

Readings:

None

Topic 2: The future of PIPEDA and privacy law in Canada

Guest speaker: – Ms. Kate Wilson, Legal Counsel, Office of the Privacy Commissioner of Canada

Readings:

Towards Privacy by Design: Review of the Personal Information Protection and Electronic Documents Act, Report of the Standing Committee on Access to Information, Privacy and Ethics, February 2018, <http://bit.ly/2OIKSuN>.

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/ 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) 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 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), and the [Office for Students with Disabilities](#), 514-398-6009.