

REGULATED DIGITAL INDUSTRIES:

THE LAW & POLICY OF COMMUNICATIONS NETWORKS AND PLATFORMS

M/T/W 840am–950am ▪ 170 Law Building *or* Zoom Meeting ID: tnarecha (Password: b3rk3l3y)
Prof. Narechania ▪ 689 Simon ▪ OH: W 200pm–330pm (300pm–330pm available for appointments)

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 of 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.

In this course, we will tackle such questions as: 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 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 rationales for regulatory interventions into communications markets;
- understand the statutory (and concomitant regulatory) system governing various aspects of the telecommunications sector;
- 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:

- Narechania, *Regulated Digital Industries Reader* [RDIR];
- Narechania, *Regulated Digital Industries Reader: Statutory Supplement* [SS]; and
- other supplemental materials as are posted to bCourses [bC].

The following text provides additional, optional reading and context:

- NUECHTERLEIN & WEISER, *DIGITAL CROSSROADS* (2d ed. 2013) [DC]. DC is available electronically through the law library at no cost to students.

Course Schedule

We will meet on Monday, Tuesday, and Wednesday mornings, from 840am to 950am, 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 make adjustments over the semester. Hence, dates, assignments, and readings are subject to change. 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). You should generally prepare one full syllabus assignment past the end of our previous class.

You will notice that I have scheduled three advance make-up classes at 230pm, in 170 Law Building, on Friday, October 3, Friday, October 17, and Friday, October 31. I have also cancelled class on November 10. I have found that preemptively scheduling these additional sessions (which will be recorded) helps to mitigate the end-of-semester crunch. Ideally, these changes will help us to enjoy an extended Veterans' Day weekend, as well as to end class by the Thanksgiving break. At worst, these changes will help mitigate issues that arise out of any unexpected circumstances we encounter during the semester (e.g., sickness, or emergency-related closures).

In addition to the course meetings described below, I will try to organize one or more optional tours of a Comcast "headend" facility, so that you may see, in person, some of the core Internet infrastructure that we study in the course. Seeing this technology for yourself can help to bring the course alive. I will share details and dates for these visits during the semester.

One note on the course's reading "load:" We will read almost all of RDIR (skipping about 50 pages on network neutrality). RDIR totals ~820 pages, and so, across our 42 classes, we will average less than 20 casebook pages per class session—a reasonable average for an upper-division law school course. But you will notice that the reading load gradually increases over the semester: Assignments are shorter in the beginning of the term, and there are a couple long ones in our final weeks. This is because we introduce some complicated concepts in the beginning of the class—and then revisit them through the semester. The reading pace is thus somewhat slower at the beginning, to make sure we can master those concepts early. Once we have covered those basics, we can move faster later in the term. (And the advance make-up classes should mitigate some of the concern associated with lengthy readings towards the end of the semester.)

Fundamentals

1. Introductions: Syllabus & A Framework for the Course (August 18, 2025)
RDIR: ii–ix (*skim*), 1–17; bC: Syllabus

Regulations and Regulators:

2. Justifying Regulation (August 19, 2025)
RDIR: 18–23
Optional: DC: 3–17
3. Statutory and Institutional Structure (August 20, 2025)
RDIR: 24–42; SS: 3–12 (*skim*)
Optional: DC: 17–22
4. Statutory and Institutional Structure, cont'd (August 25, 2025)
no additional reading
Guest Lecture: Stephanie Weiner, former NTIA Chief Counsel & FCC Associate General Counsel

Regulating Physical Networks

Common Carrier (Wireline) Regulation:

5. Rate Regulation, Then and Now (August 26, 2025)
RDIR: 43–54; SS: 13–14
Optional: DC: 23–40
6. Competition and the Telecommunications Act of 1996 (August 27, 2025)
RDIR: 54–66; SS: 15–17
Optional: DC: 51–62, 68–74
7. Interconnection Policy, Then (September 2, 2025)
RDIR: 66–72; SS: 15–17 (*revisit*)
Optional: DC: 244–248, 252–255, 257–260
8. Interconnection Policy, Now (September 3, 2025)
RDIR: 72–81; SS: 15–17 (*revisit*)
Optional: DC: 263–265, 268–275

Spectrum (Wireless) Regulation:

9. Justifying Spectrum Regulation; Comparative Hearings (September 8, 2025)
RDIR: 82–102; SS: 18–21
Optional: DC: 83–90, 92–96, 117–125 (skip the first 3 full ¶¶ on 120–121), 127–128, 142–144; bC: Robert A. Caro, MEANS OF ASCENT, Chapter 6

Note: *Office of Communication of the United Church of Christ v. FCC*, excerpted in RDIR, contains a redacted reference to an unacceptable, disgraceful term used to disparage certain people of color.

10. Spectrum as Private Property (September 9, 2025)
RDIR: 102–123; SS: 18–21 (*revisit*)
Optional: DC: 90–92, 96–100, 102–108
11. Spectrum as Common Property; Choosing Between Modes (September 10, 2025)
RDIR: 124–145; SS: 18–21 (*revisit*)
Optional: DC: 100–102, 112–117

Cable Regulation:

12. Cable as Natural Monopoly; Cable after Natural Monopoly (September 15, 2025)
RDIR: 146–170; SS: 22–23
Optional: DC: 329–333
13. Cable after Natural Monopoly, cont'd (September 16, 2025)
RDIR: 171–185; SS: 24–25
Optional: DC: 333 (¶ 1 of subsection [B] only)

The Internet

Internet Infrastructure and Access:

14. Catching Up; A Short History of Internet Technology and Regulation (September 17, 2025)
RDIR: 186–191
Optional: DC: 159, 165–173, 178–185; bC: *The Magic School Bus Rides Again: Nothin’ But Net* (Netflix Season 2, Ep. 4); TELEGEOGRAPHY, *Telegeography Literally Explains the Internet* (podcast)
15. Infrastructure Deployment and Make-Ready Policies (September 22, 2025)
RDIR: 191–215; SS: 26–28
16. Universal Service (September 23, 2025)
RDIR: 215–232; bC: DC: 295–297, 301–307, 314–317 (end at ¶ beginning “Meanwhile...”)
17. Universal Service, cont’d (September 24, 2025)
RDIR: 232–238; SS: 29–31
Optional: DC: 307–314
Guest Lecture: Alan Davidson, Administrator of NTIA and Assistant Secretary of Commerce
18. Community Broadband and Public Options; Catching Up (September 29, 2025)
RDIR: 238–250; SS: 32–33

Network Neutrality:

19. Network Neutrality: Policy Justifications (September 30, 2025)
RDIR: 251–260
Optional: DC: 187–193, 216–230
20. Network Neutrality: Legal Background (October 1, 2025)
RDIR: 261–289, SS: 32–33
Optional: DC: 194–199 (end at “That period of regulatory quiescence...”)
21. Network Neutrality: Legal Missteps (October 3, 2025) **[ADVANCE MAKE-UP]**
RDIR: 289–317
Optional: DC: 199–200, 235–241
22. Network Neutrality: Legal Conclusion? (October 6, 2025)
RDIR: 357–358 notes 1–6, 358–368, 389; SS 32–33 (*revisit*)
23. Special Topics in Network Neutrality: State Power and Zero-Rating (October 7, 2025)
RDIR: 368–388
Optional: DC: 211–214

Internet Interconnection:

24. Network Interconnection (October 8, 2025)
RDIR: 390–415
Optional: DC: 287–293; TELEGEOGRAPHY, *Telegeography Literally Explains Transport Networks* (podcast) (start at 44:44)
25. The Turn to CDNs (October 14, 2025)
RDIR: 415–428

Content

Application Interconnection:

26. Catching Up; Application Interconnection (October 15, 2025)
RDIR: 429–454; SS: 34
Optional: DC: 280–284, 380–383

Ownership Regulation:

27. Ownership and National Security (October 17, 2025) **[ADVANCE MAKE-UP]**
RDIR: 455–468; SS: 34
28. Ownership and Competition (October 20, 2025)
RDIR: 468–492; SS: 35–36
Optional: DC: 355–358, 359–364
29. Ownership and Diversity (October 21, 2025)
RDIR: 492–518

Content and Vertical Integration:

30. Program Access (October 22, 2025)
RDIR: 519–549; SS: 37–38
Optional: DC: 355–358, 359–364
31. Program Access, cont'd; Program Carriage (October 27, 2025)
RDIR: 549–560; SS: 39
Optional: DC: 349–351, 358–359

Content, Copyright, and Control:

32. Copyright and Retransmission Consent (October 28, 2025)
RDIR: 561–569; SS: 40–42
Optional: DC: 335–339, 340–343
33. Regulatory Parity (October 29, 2025)
RDIR: 569–596; SS: 40–42 (*revisit*)
Optional: DC 347–349
34. Parity Revisited: Accessibility, Captioning, and Control (October 31, 2025) **[ADVANCE MAKE-UP]**
RDIR: 596–616; SS: 43–44

First Amendment Concerns:

35. Must Carry (November 3, 2025)
RDIR: 617–667; SS: 45
Optional: DC: 339–340
36. Politics (November 4, 2025)
RDIR: 667–697; SS: 46
37. Indecency (November 5, 2025)
RDIR: 697–721

Platform Policy:

38. Content Moderation and Platform Immunity (November 12, 2025) **[NO CLASS ON NOV. 10]**
RDIR: 722–732; SS: 47–49
39. Two (and a Half) Questions about Immunity (November 17, 2025)
RDIR: 732–754; SS: 47–49 (*revisit*)
40. Regulating Moderation and Immunity (November 18, 2025)
RDIR: 754–778; SS: 47–49 (*revisit*)
41. Regulating Moderation and Immunity, cont'd (November 19, 2025)
RDIR: 778–788

Possible Guest Lecture

Comparative Institutional Competence

42. Comparative Institutional Competence; Broadband Privacy (November 24, 2025)
RDIR: 789–820; SS: 50
Optional: DC: 365–376

Grading and Assessments

Your final grade will be a function of: a final exam; classroom participation; and optional extra credit.

Final Exam

The grade you earn will be based primarily on one four-hour, in-class final examination, consisting of two parts:

- a limited open-book, short-answer (i.e., 100-word) portion consisting of 3-10 questions; and
- a limited open-book, essay portion consisting of 1–3 questions.

The exam will test your understanding of the materials covered in class, including by testing your ability to apply the principles covered to new factual situations. We will cover further exam specifics, including the scope of the exam's "limited open-book" policy, during the semester.

Professionalism, Attendance, and Participation

I may adjust your final exam score by up to 10% of your earned grade to account for professionalism, attendance, and participation (see details below). Hence, these factors can 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, is disrespectful, or consistently veers our conversations off track, may be treated the same as (or worse than) students who do not participate at all.

Optional Extra Credit

As you will see, we are piloting RDIR for conversion into a law school casebook. If you wish, you may keep track of any reasonable, specific edits you would suggest for RDIR over the course of the semester. Such edits can include: technical copy edits, additions or revisions to introductory text prior to case excerpts, additions or revisions to the notes and questions following case excerpts, edits to case excerpts, suggestions for different or additional cases to include, additions or changes to the statutory supplement, among other ideas. Students who choose to do this and turn in their edits by the end of the reading period (December 4, 2025) can earn extra credit in the form of up to 5% of your earned final exam score, where such edits evince

careful and thoughtful engagement with the material, including how to more effectively convey the core principles covered in the class, and are reasonably specific and actionable.

General Policies and Information

Course-Specific Policies

Attendance: If, for any reason, you are not prepared to participate in a regularly scheduled 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.) Make-up classes (including make-up classes scheduled in advance) are not subject to this policy because they fall outside of our regular schedule, and I understand that students may have existing obligations that conflict with the schedule for make-up classes. 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. I encourage you to take handwritten notes if you can. (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 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.

Artificial Intelligence: In general, my policy on the use of “artificial intelligence” (AI) resources conforms to Berkeley Law’s general policy on such matters. If you have questions about the use of AI resources in this class, feel free to ask me directly. Please do so before engaging the use of an AI tool, as some uses may violate the honor code (see below) and result in severe consequences.

Class Recording: Our regularly scheduled 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. Students may participate in class assured that their in-class contributions will not be recorded, except as necessary for a disability accommodation.

I may make, in my sole discretion, limited exceptions to this policy for extenuating class-wide circumstances, including for virtual classes. Make-up classes (including make-up classes scheduled in advance) are recorded because they fall outside of our regular schedule, and I understand that students may have existing obligations that conflict with the schedule for make-up classes. Berkeley Law’s academic rules prohibit students from distributing class recordings—including complete and partial audio or video recordings, chat transcripts, and screenshots—for any reason (unless authorized in connection with a disability accommodation).

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 office hours on Wednesdays from 200pm–330pm. My door will be open for drop-in questions from 200pm to 300pm. You may reserve a private appointment with me at 300pm or 315pm on Wednesdays using the sign-up sheet posted outside my office door (689 Simon). If no appointments are scheduled at that time, my door will remain open for drop-in questions. You may use this time to ask me about the course and course material, and also to ask me other questions about law, legal careers (including clerkships), law school, or other related topics.

I am also happy to respond to course-related questions by email (at 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.

I recognize that this course’s content can be difficult: As I said above, this is one of our most complex areas of law, and the understanding the law depends, in part, on understanding the underlying technology and the economics of the sector. I have tried to identify additional resources that can aid your understanding of the material. For example, I do not require that you read DIGITAL CROSSROADS (except in one class) in part because the book is dated (it is now well over a decade old). But it offers a very readable explanation of core concepts that you might find helpful. That is, doing the optional readings might help you grasp some of the more difficult concepts. Our class sessions are also designed to help illuminate the core concepts and doctrinal details of this area of law: Doing the reading *and* coming to class may be critical to your success in this class.

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: Because the law school is committed to anonymous grading, the Office of the Dean of Students schedules all exams, including accommodated exams. Professors do not have the authority to reschedule exams. Students who need accommodations for disability or pregnancy or want to discuss the implementation of their accommodations, including accommodated exams, should contact Chelsea Yuan, Director of Student Academic Advising and Support Services—Accessible Education, 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.

If you suspect that the Academic Honor Code has been violated, do not take matters into your own hands. Instead, please contact the Dean of Students as soon as possible with your concerns.

Resources and Support

Academic Skills: The Academic Skills Program helps students develop such core academic skills as time management, case-reading, outlining, and exam-taking. It offers handouts, study aids, and practice exam information, among other resources. For details, visit: <https://bit.ly/BerkeleyLaw-ASP>.

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. 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 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. 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, please 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. 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, in which we respect each other's opinions, and in which we communicate our own opinions respectfully. We will practice respect, empathy, and patience in our class.