

**Governing Digital Technologies**  
**Reading Group**  
**Harvard Law School**  
**Fall 2024**

**Instructor:** [Jonathan Zittrain](#)  
**Teaching Assistant:** [Brigitte Fink](#)

**Mondays 3:45-5:45 PM**

**COURSE OVERVIEW**

There has been a vigorous, decades-long debate around the governance of digital technology – one conducted variously in the public sphere, in academia, and among regulators and legislators – with a discernible impact on the development and use of consumer-facing technologies. These technologies include the Internet and applications built on top of it; AI and machine learning; and the digital platforms that began as individual apps but then became themselves a more comprehensive, at times totalizing, infrastructure of ubiquitous sensors, data, and user analysis.

This reading group will strive to contextualize today’s technology-driven policy challenges in terms of some of the complex technical, legal, and political arcs of digital governance. Over the course of six sessions, we will provide an introduction to the roots of seemingly novel governance problems, as well as look at a few examples of questions of technology policy, looking for the limitations and opportunities confronting both regulators and private-sector decision-makers – and the users of these technologies.

**COURSE MATERIALS**

We’ve planned for a manageable amount of readings for this course. As discussion will be launched from the assigned readings, we require that students prepare carefully and completely for each session. In a discussion-based seminar format, failure to complete the readings will likely be both obvious and an impediment to the flow of class.

Most course readings are available on this course’s [H2O playlist here](#), downloads of PDFs will be available on Canvas, and links to readings are also provided in the reading list that follows. Please read instructions carefully for course materials as certain weeks will only require segments of readings. Additional materials may be circulated via email in advance of class as needed.

**ATTENDANCE POLICY**

This course relies on the attendance and participation of the students involved. It is expected that students will have read the course material ahead of class time, and arrive ready to engage in thoughtful respectful discussion. This course also only meets over the course of six (6)

sessions, and missing or not being prepared is a hindrance to the discussion and continuation for the group at large, with potential effect on a passing grade for this pass/fail course.

### **ACCESSIBILITY POLICY**

Harvard Law School is dedicated to facilitating equal access for students with disabilities and to cultivating a campus culture that is sensitive and responsive to the needs of students. To request an accommodation for a disability during the course, students are welcome to reach out to Accessibility Services at [accessibility@law.harvard.edu](mailto:accessibility@law.harvard.edu) or at 617-495-8773. Additional information, including how to register for accommodations, can be found on the [HLS Accessibility Services Resources Page](#).

### **READINGS AND SESSION INFORMATION:**

#### **Day One (9/16): Introduction – Architecture & Law: Harmful Speech & CDA 230**

*Session Question: Informed by the below as well as your own experiences, be ready to discuss what you believe the responsibilities of platforms should be for what their users post and/or who should be holding platforms or users accountable for their posts.*

- [“The Law of the Horse: What Cyberlaw Might Teach”](#) by Lawrence Lessig, HLR Commentaries (1999) **[Read 501-505; 546]**
- [“WTF is CDA?”](#) by Berkman Klein Center Assembly Students, CDA.WTF (2020)
- [“Infographic: Why CDA 230 Is So Important”](#) by EFF (2013)
- [“Herrick v. Grindr: Why Section 230 of the Communication Decency Act Must be Fixed”](#) by Carrie Goldberg, Lawfare (2019)
- [Sony Corp. of America v. Universal City Studios, Inc.](#), 464 U.S. 417 (1984) **[Read syllabus ONLY]**
- [“Sunset of Section 230 Would Force Big Tech’s Hand”](#) by House Energy and Commerce Committee Chair Cathy McMorris Rodgers (R-WA) and Ranking Member Frank Pallone, Jr. (D-NJ), Wall Street Journal (2024)
- [“Transcript: House Hearing on “Proposal to Sunset Section 230 of the Communications Decency Act”](#) by Gabby Miller, Tech Policy (2024) **[Read summary, up to “What follows is a lightly edited transcript of the discussion.”]**
- [“Sunsetting Section 230 Will Hurt Internet Users, Not Big Tech”](#) by Aaron Mackey and Joe Mullin, EFF (2024)
- [“Frameworks” Excerpt from Gaining Power, Losing Control: Our Choices as We Confront the Next Technology Revolution](#) by Jonathan Zittrain (2024) **[Please collect print copy]**

#### **Optional:**

- [“Experts grade Facebook, TikTok, Twitter, YouTube on Readiness to Handle Election Misinformation”](#) by Dam Hee Kim, Anjana Susarla, Scott Shackelford, Scientific American (2022)
- [The Third Circuit’s Section 230 Decision In Anderson v. TikTok Is Pure Poppycock](#), by Corbin Barthold, Techdirt. (2024)

- [Judges Rule Big Tech's Free Ride on Section 230 Is Over](#), by Matt Stoller, BIG by Matt Stoller (2024)

## Day Two (9/30): Platforms: Platform Constitutionalism & the Oversight Board

*Session Question: Does a distinction between public and private actors still help us understand rights and responsibilities?*

- [“Between Suffocation and Abdication: Three Eras of Governing Digital Platforms”](#) by Jonathan Zittrain, Clare Hall Tanner Lectures (2020) Lecture 1 (58:00)
  - [\(The paper version\)](#)
- [Marsh v. Alabama](#), 326 U.S. 501 (1946) **[Read syllabus, Skim Case]**
- [“Inside Meta’s Oversight Board: 2 Years of Pushing Limits”](#) by Steven Levy, Wired (2022)
- [“Meta created a ‘Supreme Court’ for content. Then it threatened its funds”](#) by Naomi Nix, Washington Post (2024)
- [“A Jury of Random People Can Do Wonders for Facebook”](#) by Jonathan Zittrain, The Atlantic (2019)
- [“The fediverse, explained”](#) by David Pierce, The Verge (2024)
- [“Centralized, Decentralized/Federated, and Distributed Social Media Systems”](#) by Brendan Miller, Applied Social Media Lab, BKC (2024)

## Optional

- [“The Christchurch Call to Action to Eliminate Terrorist and Violent Extremist Content Online”](#) by Christchurch Call (2019)

## Day Three (10/7): Data: Information Fiduciaries

*Session Question: Is it okay for a library to make [Mein Kampf](#) available to its patrons? Under what circumstances should a responsible librarian recommend or decline to recommend the book? If Big Tech had to look out for its users’ interests, what form would that responsibility take and how would that manifest– including in the ways in which it makes recommendations?*

- [“How to Exercise the Power You Didn’t Ask For”](#) by Jonathan Zittrain, Harvard Business Review (2018)
- [“A Skeptical View of Information Fiduciaries”](#) by Lina Khan & David Pozen, Harvard Law Review (2019) **[Read II.b. (pg 510) - III (pg 528)]**
- [“A Trustworthy Tech Challenge](#), a research initiative from the Berkman Klein Center at Harvard University, the University of Exeter, and the TUM School of Social Science and Technology in Munich, BKC (2024) **[Read & complete survey]**
- [“New Features and Additional Transparency Measures as the Digital Services Act Comes Into Effect”](#) by Nick Clegg, Meta News (2023)
- [“Thierry Breton’s Letter to X”](#) by Thierry Breton, X (2024)
- [“JOINT STATEMENT by Access Now, ARTICLE 19: Global Campaign for Free Expression \(ARTICLE 19\) and the Electronic Frontier Foundation \(EFF\)”](#) by Access Now, ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19), and EFF (2024)
- [“The Digital Services Act’s lesson for U.S. policymakers: Co-regulatory mechanisms”](#) by

David Morar, Brookings (2022)

**Optional:**

- [“Musk tried to ‘punish’ critics, judge rules, in tossing a lawsuit”](#) by Will Oremus and Taylor Telford, Washington Post (2024)
- [“What the E.U.’s sweeping rules for Big Tech mean for your life online”](#) by Chris Velazco, Washington Post (2023)
- [“How Other Countries Have Dealt With Intermediary Liability”](#) by Ash Johnson and Daniel Castro, The Information Technology and Innovation Foundation (2021)

**Day Four (10/28): Generative AI**

*Session Question: What new questions does AI bring up? At what points of the generative AI supply chain should responsibilities be introduced and what should they look like? And by whom?*

- [“Understanding accountability in algorithmic supply chains”](#) by Jennifer Cobbe, Michael Veale, Jatinder Singh, Computers & Society (2023) **[Section 3]**
- VIDEO: “Generative AI” by Jonathan Zittrain **[On Canvas]**
- [“Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence”](#) by White House (2023)
- [“NIST’s Responsibilities Under the October 30, 2023 Executive Order”](#) by National Institute of Standards and Technology (2024) **[Summary]**
- [“We Need to Control AI Agents Now”](#) by Jonathan Zittrain, The Atlantic (2024)

**Optional:**

- [“It Looked Like a Reliable News Site. It Was an A.I. Chop Shop”](#) by Kashmir Hill and Tiffany Hsu, New York Times (2024)
- [“Generative AI exists because of the transformer: This is how it works”](#) by Visual Storytelling Team and Madhumita Murgia, Financial Times (2023)
- [“Large Language Models, explained with a minimum of math and jargon”](#) by Timothy B. Lee, Sean Trott, Understanding AI (2023)
- [“How to Picture A.I.”](#) By Jaron Lanier, New Yorker (2024)

**Day Five (11/4): California AI Safety Bill**

*Session Question: If you were the California governor, would you sign this bill? How well does this bill cover the range of uncertain developmental outcomes for AI? Do any provisions jump out or cry for revision?*

- [SB 1047: Safe and Secure Innovation for Frontier Artificial Intelligence Models Act](#), bill author Scott Wiener (D-D11), Digital Democracy Cal Matters (2024)
- [“Letter to CA state leadership from Professors Bengio, Hinton, Lessig, & Russell”](#) by Professors Bengio, Hinton, Lessig, and Russell, Safe & Secure AI Innovation (2024)
- [“Letter to Governor Newsom RE: SB 1047 \(Wiener\) from Dario Amodei”](#) by Dario Amodei, Anthropic (2024)

- [“New Poll: California Voters, Including Tech Workers, Strongly Support AI Regulation Bill SB1047”](#) by Artificial Intelligence Policy Institute (AIPI) (2024)
- **Will potentially be updated:** [“The controversial California AI bill that has divided the tech world”](#) by Ina Fried and Ashley Gold, Axios (2024)

**Optional:**

- [“SB 1047 August 15 Author Amendments Overview”](#) By Nathan Calvin, Center for AI Safety Action Fund (2024)

**Day Six (11/18): Final & Closing – Architectural Revisiting**

*Session Question: How do you think differently about these issues than you did at the beginning of our group? Can we regulate without agreement on purpose and means? Whom do you trust most to uphold the public interest? Is that the right question to ask for digital governance?*

- [Murthy, Surgeon General, et al., v. Missouri, et al.](#) (2024)
- [“Mark Zuckerberg’s letter to the House Judiciary”](#) by Mark Zuckerberg, Meta (2024)
- [“Nina Jankowicz commentary on Mark Zuckerberg’s letter to the House Judiciary”](#) by Nina Jankowicz, @wiczipedia, X (2024)
- [“Lena”](#) by qntm, Valuable Humans in Transit and Other Stories (2021)

**Optional:**

- [Informal Governance: Internet Referral Units and the Rise of State Interpretation of Terms of Service](#), by Rabea Eghbariah and Amre Metwally, Yale Journal of Law & Technology (2021)