

Syllabus: Emerging Tech Regulations

Updated: August 2024

Syllabus: Law 318: Regulation of the Tech Economy

George Mason University Law School – Fall 2024

Prof Kathryn Mauler

Brief Course Description:

This course will explore the complex and rapidly evolving legal landscape surrounding emerging technologies. We will examine how existing regulatory frameworks are adapting to address issues posed by artificial intelligence (AI), blockchain, autonomous vehicles, and other cutting-edge advancements. The course will consider the role of various actors, including federal and state governments, international bodies, and private industry, in shaping the regulatory environment for these technologies.

Learning Outcomes:

By the end of the course, students should be able to:

1. Analyze the legal challenges posed by emerging technologies.
2. Evaluate the effectiveness of existing regulatory frameworks in addressing these challenges.
3. Understand the role of different actors in shaping the regulatory environment for emerging technologies.
4. Develop critical thinking and problem-solving skills in the context of emerging technology regulation.
5. Critically analyze the regulatory policy decisions, directives, and actions for developing and implementing technology policy in relation to federal laws, executive orders, regulations, and ongoing cases.

Class Format:

- Writing course; two credits; one two-hour course per week (Tuesdays 8:10-10:10pm)
- **Active participation in class is required and students are expected to be prepared to discuss reading materials** for each class session.

Paper Due Date:

- November 19 at 11:00pm ET.
 - Papers are due via email no later than the date and time above.
 - ****Please note that late papers will receive a full grade deduction for every day the paper is late** based on current law school policy, so please turn papers in on time.**

Class Schedule:

- Tuesdays 8:10-10:10pm ET.

Office Hours:

- By appointment only (please email Professor Mauler to request a time).

Faculty Contact Information:

Kathryn Mauler
kciano@gmu.edu

Instructor Expectation and Course Rules:

- Students are expected to complete the assigned readings before each week's class and to come prepared to discuss them.
 - Socratic dialogues will be employed by the instructors to facilitate learning outcomes.
 - If unforeseen circumstances prevent a student from preparing for class, the student is nonetheless encouraged to attend and should inform the instructors in advance if they are not prepared to be called upon.
- All students are expected to treat each other and the instructors with courtesy and respect.
 - Ideas and theories are welcome and encouraged to be challenged, but such critiques should never take the form of personal attacks on another speaker within the classroom setting.
 - The instructors seek a safe academic environment wherein ethical and philosophical issues can be intellectually explored.
- Students must use their MasonLive email account to receive important University information, including communications related to this class.
 - The instructors will not respond to messages sent from or send messages to a non-Mason email address.

Grading:

- Grades will be based on two short response assignments, one final regulatory comment, and on leading the discussion in class participation.

- Final grades can be adjusted by a single increment either upward or downward (e.g., from B to B+) based on more general class participation.
- We will be taking class attendance, also consistent with law school and ABA policy.

Class Recordings Prohibited:

- Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device, camera, or computer.
 - Any exceptions to this policy must be expressly authorized in writing by the instructor(s).
 - The instructors do not intend to record the weekly course meetings.

Academic Integrity:

It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

Classroom Accommodations:

Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <https://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at ods@gmu.edu or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

Course Materials:

All course materials are cases or articles available on Westlaw or Lexis-Nexis or posted on TWEN. Materials posted on TWEN are indicated below.

Syllabus is Preliminary and Subject to Change:

** Given the developing nature of this area of law, it is highly likely that the syllabus and readings will be updated over the course of the semester. I may deviate from the tentative syllabus with assignments taken from current events, new cases, to accommodate guest speakers, scheduling reasons, etc. Therefore, please regularly check your email and TWEN for updates to the syllabus and readings. **

Course Schedule:

Week 1 (Aug. 27): Introduction to Regulatory Challenges of Emerging Technologies

1. Lawrence Lessig, *The Law of the Horse: What Cyberlaw Might Teach*, 113 Harv. L. Rev. 501 (1999)
2. *Reno v. ACLU*, 521 U.S. 844 (1997)
3. Cary Coglianese, *Regulating New Tech: Problems, Pathways, and People* (2021)
4. Laurie A. Harris, *Artificial Intelligence: Overview, Recent Advances, and Considerations for the 118th Congress*, Congressional Research Service, R47644, (Aug. 4, 2023)

Week 2 (Sept. 3): The Regulatory Landscape

1. *Gonzales v. Raich*, 545 U.S. 1 (2005)
2. *Access Living of Metro. Chi. v. Uber Techs., Inc.*, 958 F.3d 604 (7th Cir. 2020)
3. *Assembly Bill 5*, 2019-2020 Reg. Sess. (Cal. 2019)
4. *Kelo v. City of New London*, 545 U.S. 469 (2005)

Week 3 (Sept 10): Theories of Regulation

1. Simeon Djankov et al, *The Regulation of Entry*, The Quarterly Journal of Economics (February 2002)
2. James B. Bailey & Diana W. Thomas, *Regulating Away Competition: The Effect of Regulation on Entrepreneurship and Employment*, J. Regulatory Economics (2017)
3. Lee G. Branstetter et al, *Do Entry Regulations Deter Entrepreneurship and Job Creation? Evidence from Reforms in Portugal*, National Bureau of Economic Research (October 2010)

Note: By September 17 please send me your first regulatory comment writing assignment, no later than 11pm via email.

Week 4 (Sept. 17): Impacts and Protections

1. Elizabeth Pollman & Jordan Barry, *Regulatory Entrepreneurship*, 90 S. Cal. L. Rev. 383 (2017)
2. *Lochner v. New York*, 198 U.S. 45 (1905)
3. *National Highway Traffic Safety Administration, Automated Driving Systems: A Vision for Safety* (2017)
4. Jerry Brito & Andrea Castillo, *Bitcoin: A Primer for Policymakers* (Mercatus Center at George Mason Univ., Dec. 2013)

Week 5 (Sept. 24): Free Speech and Technology

1. *Force v. Facebook, Inc.*, 934 F. 3d (2nd Cir. 2019)
2. *Biden v. Knight First Amdt. Inst. at Columbia Univ.*, 141 S. Ct. 1220-1227 (2021) (please read Justice Thomas's concurrence)

3. *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997)
4. Jud Campbell, *Natural Rights and the First Amendment*, 127 Yale L.J. 246, 287 (2017)

Week 6 (Oct. 1): Preemption and Levels of Regulatory Authority

1. Stewart E. Sterk, *The Federalist Dimension of Regulatory Takings Jurisprudence*, 114 Yale L.J. 203 (2004)
2. Caleb Nelson, *Preemption*, 86 Va. L. Rev. 225 (2000)
3. Nina A. Mendelson, *Chevron and Preemption*, 102 Mich. L. Rev. 737 (2004)
4. Jerry Brito & Andrea Castillo, *Bitcoin: A Primer for Policymakers* (Mercatus Center at George Mason Univ., Dec. 2013)

Week 7 (Oct. 8): Privacy, US, and the World

1. Neil Chilson, *When Considering Federal Privacy Legislation*, 47 Pepp. L. Rev. 917 (2020)
2. Adam J. Thierer, *Privacy and Reputation in a Post-Regulatory World*, Foundation for Pub. Policy Research (Aug. 2013)
3. Woodrow Hartzog & Neil M. Richards, *Privacy's Constitutional Moment and the Limits of Data Protection*, 61 Boston College Law Review 1687 (2020)

Note: By October 15 please send me your second regulatory comment writing assignment, no later than 11pm via email.

Week 8 (Oct. 15) Work in the New Economy

1. *Dynamex Operations W. v. Superior Court*, 4 Cal. 5th 903 (Cal. 2018)
2. Miriam Cherry & Antonio Aloisi, *Dependent Contractors in the Gig Economy: A Comparative Approach*, 66 Am. U. L. Rev. 635 (2017)
3. John McGinnis, *The Sharing Economy as an Equalizing Economy*, 94 Notre Dame L. Rev. 1233 (2019)
4. Federal Trade Commission, *Disclosures 101 for Social Media Influencers* (2019)

Week 9 (Oct. 22) – Guest Professor – The Impact of National Security on Tech Regulations

1. *The Malicious Use of Artificial Intelligence: Forecasting, Prevention, and Mitigation* (2018) (Report by the Future of Humanity Institute)
2. *Katz v. United States*, 389 US 347 (1967)
3. *Smith v. Maryland*, 442 U.S. 735 (1979)
4. Paul Rosenzweig, *The Evolution of Wiretapping*, Engage – pp. 83-87 (Sept. 2011)
5. Fin. Stability Bd., *Crypto-Asset Market Regulation: Risks, Challenges, and Potential Approaches* (July. 17, 2023)

Week 10 (Oct. 29) The Emerging Law of Artificial Intelligence (AI)

1. The White House, Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence (Oct. 20, 2023) (read only Sects. 1-2, Sec. 3(k), and Sect. 4.1(b))
2. Timothy B. Lee & Sean Trott, *A Jargon-free Explanation of How AI Large Language Models Work*, ARS Technica (July 31, 2023)
3. Oliver Patel, EU AI Act Cheat Sheet, International Association of Privacy Professionals (Dec. 8, 2023)
4. Tate Ryan-Mosley, *Why the EU AI Act was So Hard to Agree On*, MIT Technology Review (Dec. 11, 2023)

Week 11 (Nov. 5) – Election Day, No Class, I encourage you to volunteer in some capacity.

Week 12 (Nov. 12): AI, Safety, and Ethics

1. Chase DiFelicianantonio, *Tech Leaders Release AI Safety Principles With Federal Backing*, *Government Technology* (Nov. 15, 2023)
2. Nick Bostrom & Eliezer Yudkowsky, *The Ethics of Artificial Intelligence*, *The Cambridge Handbook of Artificial Intelligence*, 316-334 (2014)
3. Jake Silberg & James Manyika, *Tackling Bias in Artificial Intelligence (and in Humans)*, McKinsey Global Institute (June 6, 2019)

Week 13 (Nov. 19): **Final Regulatory Comments Due**

1. The White House, Fact Sheet: Biden-Harris Administration Secures Voluntary Commitments from Eight Additional Artificial Intelligence Companies to Manage the Risks Posed by AI (Sept. 12, 2023)
2. The White House, Voluntary AI Commitments (Sept. 12, 2023)
3. National Institute of Standards and Technology, *NIST Offers Draft Guidance on Evaluating a Privacy Protection Technique for the AI Era* (Dec. 11, 2023)

Week 14 (Nov. 22): Presentations

- Class Presentations

Note: This syllabus is subject to change at the instructor's discretion.