



**COMM 499 Special Topics:  
Media Technologies and Free Speech**  
4 units

Spring 2020 – Section #20775  
Tuesday/Thursday – 11:00am-12:20pm  
Location: ANN 209

Instructor: Prof. Jennifer Petersen  
Office Hours: By appointment  
Office: ASC 307  
Contact Info: [jpetersen@usc.edu](mailto:jpetersen@usc.edu)

**Course Description:**

Should computer code and hyperlinks be considered speech, protected by the First Amendment? Silent film? Can there be speech without a speaker? How do we draw the line between conduct that is expressive and thus protected under the First Amendment and that which is potentially harmful, and subject to regulation? These are just some of the questions that new communication technologies have spurred for free speech law in the United States. In this class, we will explore legal debates about how freedom of speech should apply to “new media” from film to computer algorithms and video games, and the different cultural concerns and events that have shaped these debates. Along the way, we will discuss some of the different legal issues associated with communications media, including censorship, corporate speech, conflicts between copyright and free expression, different forms of protest, and expressive conduct.

**Learning Objectives:**

You will leave the class with a better understanding of how the First Amendment is interpreted – and how current interpretations differ from earlier ones. You will also learn the different regulatory regimes and standards applied to different media (along with backstories on the interesting characters and conflicts that helped give rise to these regimes).

**Class Readings:**

Stein, Laura. *Speech Rights in America: The First Amendment, Democracy, and the Media*. Urbana: University of Illinois Press, 2006.

The Stein book is available on Amazon. The other required readings indicated in the syllabus are available online, in the Resources section of Blackboard and/or linked on the syllabus. Each week, we will be discussing a particular legal case or cases. Sometimes the reading will be the legal decision and sometimes it will be description or commentary. The case readings will be announced in class the week before the readings are due, and posted in the Announcements section of Blackboard.

A supplementary book on First Amendment law is recommended:

Barron, J, and Dienes, T. (2008) *First Amendment Law in a Nutshell* (4th ed.) St. Paul, MN: West Publishing

## **Class Assignments:**

**Participation:** includes contribution to group discussions, short writing assignments, and out of class preparation for class debates. You are expected to come to class having read the assigned readings and ready to discuss them. Your participation will be assessed on amount and quality of your contributions to class. Remember that this is an inter-disciplinary class and that your knowledge from other classes, personal experience, and curiosity are integral to this seminar.

**Discussion Questions:** Beginning week 3 of the semester, you are responsible for posting a discussion question in response to the readings for the week. These discussion questions should comment on themes in the readings, tease out points of comparison or contradiction, and generally pose interesting and pressing questions that you want to see us devote class time to addressing. We will not get to all the questions every week, but your questions should come to the top of the roster intermittently. Questions must be posted to Blackboard by midnight the Monday before class. These questions will be evaluated based on the engagement and comprehension of the main ideas and themes in the reading; your individual curiosity, questions, and original thought (which includes questions that apply the readings to issues happening in the world, your experience, and material you are studying in other classes); and their usefulness in discussion.

**Mid-term:** There will be a mid-term to assess your understanding of course material and key debates. The mid-term will be a take-home exam week 8 of the semester.

**Case Summary:** One of the skills you will be gaining in the course is the ability to read and, broadly, parse a legal decision. Toward this end, we will read and talk about legal decisions: how to find them, how they are put together, and how to read and understand them. Your first assignment will involve finding and summarizing a legal case.

**Paper Proposal:** Your paper proposal should outline the topic of your final paper – ideally in the form of a question or a thesis. It should also outline how you plan on completing the paper; in order to do this you will need to identify the primary and secondary materials that you will need to access and analyze in order to complete the paper.

**Literature Review:** This is a review of the secondary sources (literature) that you will be using in your paper. It should explain what others have written about the topic you want to research. For example, if you want to write a comparison of film censorship in the early 20th century U.S. and the UK, you will want to summarize the most relevant scholarship on each topic. This review will both help you in the process of writing the paper – refining your question or argument and clarifying the remaining work – and will comprise part of the final paper. The assignment is intended to break down the process of research into components and thus help you in your progress on the final paper.

**Final Paper:** Your final paper should be an original research paper relevant to the course topics and discussion. The paper may be conceptual or historical or even comparative (say, comparing free speech law in the US and another nation). I expect you to base your research in the course materials and discussions, but to extend your research and thinking beyond what we have

discussed in class in an original research project. This will require both digesting additional scholarly work in your area of interest and, most likely, finding and analyzing primary sources (e.g., legal decisions or arguments, public commentary, censored texts). The paper proposal and literature review are designed to scaffold and give you early feedback on the paper.

**Assignment Submission Policy:**

You are expected to hand in all assignments in class the day they are due. If there is any reason you will be unable to do so, it is your responsibility to make arrangements with me before the paper is due. Late assignments will be penalized by 10% for every day they are late.

**Breakdown of Grade:**

Your final grade for this class will be assessed via the assignments and expectations listed below.

Assignment	Points	% of Grade
Participation	15	15
Discussion Questions	15	15
Mid-Term	15	15
Case Summary	2	2
Paper Proposal	3	3
Literature Review	10	10
Paper Presentation	5	5
Final Paper	35	35
<b>TOTAL</b>	<b>100</b>	<b>100%</b>

**Course Grading Policy:**

Each assignment will be worth 100 points and will be converted to a percentage score depending upon the weight assigned to each. Your percentage scores on the assignments will be totaled and translated to a letter grade per the scale shown below:

A	= 100-94	C	= 76-74
A-	= 94-90	C-	= 73-70
B+	= 89-87	D+	= 69-67
B	= 86-84	D	= 66-64
B-	= 83-80	D-	= 63-60
C+	= 79-77	F	= 59-0

**Attendance:** Your first two absences will be “no questions asked.” However, your absence from discussion will be missed and you will not receive credit for your participation. After two absences, each day you miss will result in a 2% deduction from your final grade. If you expect to have absences due to University-sponsored events, it is your responsibility to alert me of these

absences during the first week of class and to notify me of each University-sponsored absence before it takes place.

**Contacting me:** I am happy to answer any questions about the course, requirements, readings, or individual work after class, in my office hours, or by appointment. My office is in ASC 307. In general, email is the best way to get in touch with me; however major concerns are often better addressed in office hours. I usually am able to return emails within 48 hours.

The planned course schedule is as follows; I reserve the right to make amendments. I will post course announcements, assignments, and related materials on Blackboard.

### **Course Schedule: A Weekly Breakdown**

#### Week 1

Preview

Read: Tim Wu, “How Twitter Killed the First Amendment”

#### Week 2

What is Free Speech? Core tenets and themes of free speech law and thought

Read: Schauer, “The First Amendment as Ideology”

Read: Sunstein, “Political Speech and the Two-Tier First Amendment”

Read: Stein, “The First Amendment and Speech Rights in Democratic Societies” Resource: Visual First Amendment

#### Week 3

Censorship of Political Speech and the Development of the Modern First Amendment

Read: Kairys, “Freedom of Speech II” from *The Politics of Law*

Read: Anderson, “The Formative Period of First Amendment Theory, 1870- 1915”

Read: Rabban, “WWI and the Creation of the Modern Civil Liberties Movement” from *Free Speech in its Forgotten Years*

Read: Kerr, “How to read a legal opinion” (sections I-III, pp. 51-61)

Case: *Schenck v. United States* (1919) [background ([http://www.oyez.org/cases/1901-1939/1918/1918\\_437](http://www.oyez.org/cases/1901-1939/1918/1918_437))]

#### Week 4

Censorship of Sex: Obscenity and Decency

Read: Saunders, “The History of Obscenity Law and the Development of its Limitation to Depictions of Sex”

Read: Heins, “Policing the Airwaves” and “The Rein of Decency” Read: Matsuda, “Public Response to Racist Speech”

Case: *Brown v. EMA* (2010)

**Case Summary due**

#### Week 5

Film Censorship and the *Speech v. Conduct* Divide

Read: Grieveson, “Policing Cinema”

Read: Petersen, “Can Silent Films Speak?” *Cinema Journal*

Optional: Amy Adler, "The First Amendment and the Second Commandment" New York Law School Law Review, 57 (2012-2013): 41-58.

Case: Mutual Film v. Industrial Commission of Ohio (1915)

### Week 6

Expressive Conduct

Read: Jeffrey Toobin, Colin Kaepernick and a Landmark Supreme Court Case, The New Yorker

Read: Coleman, selections from Coding Freedom: The Ethics and Aesthetics of Hacking

Cases: West Virginia School Board v. Barnette (1943) and Masterpiece Cakeshop v. Colorado Civil Rights Commission

**Paper Proposal Due**

### Week 7

Public Forums, then and now

Read: Barbas, "Creating the Public Forum" Read: Stein, "The Right to Public Space"

Read: "UVA President Issues Statement Regarding Planned KKK Rally", UVA Today and "Charlottesville Prepares for white nationalist rally on Saturday," Washington Post

Cases: Hague v. CIO (1939); Kovacs v. Cooper (1949)

*SPRING BREAK*

### Week 8

Midterm Review

**Mid-Term**

### Week 9

Radio and TV: Defining speech rights in a new medium

Read: Stein, "Social Mediation in Print and Broadcast Media"

Read: Streeter, "Broadcast Copyright and the Vicissitudes of Authorship in Electronic Culture"

Read: Horowitz, "The First Amendment Meets Some New Technologies: Broadcasting, Common Carriers, and Free Speech in the 1990s"

Cases: NBC v. US (1943) and Red Lion v. FCC (1969)

### Week 10

Commercial Speech

Read: Smolla, "Information, Imagery, and the First Amendment: A Case for Expansive Protection of Commercial Speech"

Read: Collins and Skover, "Commercial speech"

Case: Va Board of Pharmacists v. Virginia Citizens Consumer Council (1976)

**Literature Review due**

### Week 11

Corporate speech and speakers

Read: Bezanson, "Corporations as Speakers"

Read: Mayer, "Personalizing the Impersonal: Corporations and the Bill of Rights" Read: "Do Corporations Have Minds?" New York Times

Cases: Citizens United v. FEC (2011) and Bellotti v. First National Bank of Boston (1978)

### Week 12

Ownership v. Expression

Read: Vaidhyanathan, "The Digital Moment: The End of Copyright?"

Read: Gillespie, "The Copyright Balance and the Weight of DRM" (skim) and "Protecting DVDs: Locks, Licenses and Laws," (read)

Read: Boyle, "Private Censors, Transgenic Slavery and Electronic Indenture,"

Case: Universal City Studios v. Corley (2001)

### Week 13

Algorithms and/as Speech

Read: Stern, "Speaking in Code: Are Google Search Results Protected by the First Amendment?" Slate

Read: Lee "Do you lose speech rights if you speak using a computer?" Ars Technica Read: Coleman, "Code is Speech"

Read: Volokh and Falk, "First Amendment Protection for Search Engine Results"

Case: Google search results; iPhone v. FBI

### Week 14

AI and Machine Speech

Read: "Do Robots Have Free Speech? Amazon Says Yes" Forbes

Read: Slate, "Why Robots Deserve Free Speech Rights" Read: Wu, "Machine Speech"

Optional: Masaro and Norton, "Siri-ously? Free Speech Rights and Artificial Intelligence"

Case: TBA

### Week 15

Paper Presentations

Final Paper due on Collab (File Drop) by 5 pm. Date TBD.

## Statement on Academic Conduct and Support Systems

### Academic Conduct:

Plagiarism – presenting someone else’s ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in SCampus in Part B, Section 11, “Behavior Violating University Standards” [policy.usc.edu/scampus-part-b](http://policy.usc.edu/scampus-part-b). Other forms of academic dishonesty are equally unacceptable. See additional information in SCampus and university policies on scientific misconduct, [policy.usc.edu/scientific-misconduct](http://policy.usc.edu/scientific-misconduct).

### Support Systems:

*Counseling and Mental Health* - (213) 740-9355 – 24/7 on call  
[studenthealth.usc.edu/counseling](http://studenthealth.usc.edu/counseling)

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention.

*National Suicide Prevention Lifeline* - 1 (800) 273-8255 – 24/7 on call  
[suicidepreventionlifeline.org](http://suicidepreventionlifeline.org)

Free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

*Relationship and Sexual Violence Prevention and Services (RSVP)* - (213) 740-9355(WELL), press “0” after hours – 24/7 on call  
[studenthealth.usc.edu/sexual-assault](http://studenthealth.usc.edu/sexual-assault)

Free and confidential therapy services, workshops, and training for situations related to gender-based harm.

*Office of Equity and Diversity (OED)*- (213) 740-5086 | Title IX – (213) 821-8298  
[equity.usc.edu](http://equity.usc.edu), [titleix.usc.edu](http://titleix.usc.edu)

Information about how to get help or help someone affected by harassment or discrimination, rights of protected classes, reporting options, and additional resources for students, faculty, staff, visitors, and applicants. The university prohibits discrimination or harassment based on the following *protected characteristics*: race, color, national origin, ancestry, religion, sex, gender, gender identity, gender expression, sexual orientation, age, physical disability, medical condition, mental disability, marital status, pregnancy, veteran status, genetic information, and any other characteristic which may be specified in applicable laws and governmental regulations. The university also prohibits sexual assault, non-consensual sexual contact, sexual misconduct, intimate partner violence, stalking, malicious dissuasion, retaliation, and violation of interim measures.

*Reporting Incidents of Bias or Harassment* - (213) 740-5086 or (213) 821-8298  
[usc-advocate.symplicity.com/care\\_report](http://usc-advocate.symplicity.com/care_report)

Avenue to report incidents of bias, hate crimes, and microaggressions to the Office of Equity and Diversity |Title IX for appropriate investigation, supportive measures, and response.

*The Office of Disability Services and Programs - (213) 740-0776*

[dsp.usc.edu](http://dsp.usc.edu)

Support and accommodations for students with disabilities. Services include assistance in providing readers/notetakers/interpreters, special accommodations for test taking needs, assistance with architectural barriers, assistive technology, and support for individual needs.

*USC Support and Advocacy - (213) 821-4710*

[uscsa.usc.edu](http://uscsa.usc.edu)

Assists students and families in resolving complex personal, financial, and academic issues adversely affecting their success as a student.

*Diversity at USC - (213) 740-2101*

[diversity.usc.edu](http://diversity.usc.edu)

Information on events, programs and training, the Provost's Diversity and Inclusion Council, Diversity Liaisons for each academic school, chronology, participation, and various resources for students.

*USC Emergency - UPC: (213) 740-4321, HSC: (323) 442-1000 – 24/7 on call*

[dps.usc.edu](http://dps.usc.edu), [emergency.usc.edu](http://emergency.usc.edu)

Emergency assistance and avenue to report a crime. Latest updates regarding safety, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible.

*USC Department of Public Safety - UPC: (213) 740-6000, HSC: (323) 442-120 – 24/7 on call*

[dps.usc.edu](http://dps.usc.edu)

Non-emergency assistance or information.