

YALE LAW SCHOOL

Spring Term 2010 Examination

The Information Society

May 2010  
(Self-Scheduled)

Professor Balkin

Instructions

1. Please write an essay on *one* of the following topics, drawing on the course materials and class discussions. Please make use of these topics as a starting point for expressing your own views. Your essay should state and argue for a clear thesis of your own and should be no more than 6,000 words in length.
2. Please submit your examination electronically *and keep a copy for your own files*. You may either use the law school registrar's method for obtaining and submitting the exam or you can e-mail the exam directly to me at jack.balkin@yale.edu before 4:30pm on Thursday, May 20th, the last day for self-scheduled examinations. In the latter case, please let the registrar know that you will be submitting the exam directly to me.
3. Good luck.

**Topics for Information Society Examination:**

1. Discuss and critique the following passage from Clay Shirky's book, *Here Comes Everybody*, p. 107:

"We are plainly witnessing a restructuring of the media businesses, but their suffering isn't unique, it's prophetic. All businesses are media businesses, because whatever else they do, all businesses rely on the managing of information for two audiences-- employees and the world. The increase in the power of both individuals and groups, outside traditional organizational structures, is unprecedented. Many institutions we rely on today will not survive this change without significant alteration, and the more an institution or industry relies on information as its core product, the greater and more complete the change will be. The linking of symmetrical participation and amateur production makes this period of change remarkable."

2. Discuss and critique Yochai Benkler's views about individual freedom in *The Wealth of Networks*, particularly his discussion of autonomy in Chapter Five. Do you agree with Benkler that the changes accompanying digitally networked environments (including the rise of

commons-based peer production, search engines, and Web 2.0 applications) represent an increase in human autonomy? Of what kind? Do they also represent an increase in new forms of hierarchy, inequality, surveillance, control, or subjugation? (As an example you might consider comparing Benkler's account with Julie Cohen's and Matthew Hindman's.)

3. What is the relationship between Benkler's account of peer production and Zittrain's account of generativity in innovation? Explain Zittrain's concerns about how generativity leads to problems for Internet security. Can we extrapolate these concerns about security to other issues, like civil liberties, democracy, or the quality of knowledge production?

4. In "Won't Get Fooled Again," the famous political philosophers, The Who, tell us "Meet the New Boss/Same as the Old Boss." To what extent does the digitally networked environment displace existing elites and forms of hierarchy and inequality and offer more democratic and egalitarian forms of social life? To what extent does the digitally networked environment merely substitute new inequalities and new elites for older ones? To what extent does it allow existing inequalities and elites to reassert themselves in ever new ways?

5. Search engines and related technologies play a crucial role in the digitally networked environment. What kinds of regulation, if any, are appropriate for search engines to further a sound knowledge and information policy and avoid unjustified harms to others? To what extent should search engines be protected from regulation by the first amendment?

6. New private and public forms of surveillance have emerged in areas ranging from social software sites like Facebook to political campaigns to new methods of tracking potential crimes and threats to national security. Is the answer to these new forms of surveillance increased legal regulation protecting privacy, technological solutions, more egalitarian surveillance by more people, or more democratic control over surveillance?

7. Throughout this course we have discussed the emerging challenges to traditional methods of producing salient, relevant, and high quality information and culture based on professionalism, professional gatekeeping and professional standards of judgment. What new roles, if any, are knowledge professionals likely to play in the digitally networked environment? Are the threats to professionalism genuine or overstated? How do you think digital technologies can effectively be harnessed to substitute for the loss or the decreasing importance of older forms of knowledge production?

END OF EXAMINATION