

WRS: DIGITAL MARKETS & COMPETITION POLICY

Spring 2023, T/TH, 4:00p-5:30p (online)

Link: <https://zoom.us/j/93177085255>

Professor Nikolas Guggenberger (he, him)

nguggenberger@uh.edu

ADMINISTRATION & ORGANIZATION

This seminar will explore the legal framework that makes and defines digital markets. We will focus on antitrust law and discuss various recent proposals to address economic concentration and predatory business practices online. We will also cover select aspects of privacy protections, intermediary liability and online speech governance, regulatory impulses from abroad, and telecommunications law. Overall, we will emphasize policy and its consequences on the digital economy. While you might find a basic understanding of economics, antitrust, digital platforms, or technology helpful, there are no substantive prerequisites. A paper is required.

Goals

- Explore the of making of digital markets.
- Understand the policy options to organize digital markets and their legal, economic, sociological, and political implications.
- Develop a substantive research paper.

Course Materials

- James Grimmelmann, Internet Law: Cases and Problems, (12th ed. 2022)
This required text is available for download only at www.semaphorepress.com. Semaphore Press uses a publishing model different from the traditional law school casebook publishers. I encourage you to read about Semaphore Press's publishing approach on its website. This publisher suggests that a student pay \$1 for each class session in which Semaphore Press material is the assigned reading for the session. We will be using material from this book for 7 class sessions. Therefore, I urge you to pay \$ 7 as the suggested retail price in order to keep high-quality legal educational materials available at reasonable prices.
- Additional materials as provided.

Course Requirements and Grading

You are expected to participate actively in class, present your research, and develop a substantial research paper. Your grade will be based on your paper. The paper must be at least 10,000 words and may not exceed 15,000 words. Attendance is required and expected;

excessive absences may render you ineligible to receive credit for the course. If you have to miss a session, please let me know.

You will present your abstracts in class on February 14 (Lightning Presentations). These presentations will only be 3 minutes each, followed by a very brief discussion. The Lightning Presentations are not graded; they are intended to sharpen your main argument and generate initial feedback.

You will present your drafts on April 13, 18, and 20. These presentations will be 8-10 minutes each, followed by a brief discussion. The presentations are not graded; they are intended to provide a final round of feedback before you complete your papers.

Draft abstracts are due February 13; draft outlines are due March 15; and final papers are due by the last day of exam period—all at 6 pm central time.

Readings

I try to keep readings manageable (if you experience them as not manageable → Feedback). Readings marked as *optional* are optional, but strongly recommended if you decide to write a paper in an area adjacent to the readings.

Class Time

This is a small seminar, and we will meet exclusively online. To maximize everyone's benefit, I want this seminar to be interactive. I appreciate your thoughts, questions, and contributions. I will primarily rely on volunteers to carry on our conversation. If that does not suffice, I will call on others.

Office Hours & Time to Talk

I have built one-on-one meetings into the syllabus, and I expect you to discuss your abstract, outline, and draft with me. Beyond that, I am available for office hours upon request at any time. You can set up a meeting with me via email nguggenberger@uh.edu (please suggest three times slots that work for you) or [Calendly](#) outside of these periods. Either way, your questions are always welcome, and I am happy to help with any concerns you might have.

Feedback

Formal class evaluations often come too late to adjust the course they evaluate. Please don't wait until it is too late. Let me know what you like and what I should improve. I value and appreciate feedback in any form and at any time. Is the reading too much or too light? Are we proceeding too fast or too slow? Are there subjects that you would like to discuss or see covered? Are you looking for more resources on specific topics? Is everything just perfect? Whatever it is, *please* share it.

COVID-19 Information

Students are encouraged to visit the University's [COVID-19](#) website for important information including diagnosis and symptom protocols, testing, vaccine information, and post-exposure guidance. Please check the website throughout the semester for updates.

Reasonable Academic Adjustments/Auxiliary Aids

The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments/auxiliary aids for disabled students. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments/auxiliary aids to students who request and require them. If you believe that you have a disability requiring an academic adjustments/auxiliary aid, please contact [the Justin Dart Jr. Student Accessibility Center](#) (formerly the Justin Dart, Jr. Center for Students with DisABILITIES).

Pronouns and Chosen Names

I want to address each of you in a manner that corresponds to your identity. Although mistakes happen, chosen names and preferred pronouns will be respected in my classroom. Please feel free to reach out to me at any time if you want to make me aware of your chosen name or preferred pronoun or if you have concerns about how I or your classmates address you.

Recording of Class

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the [Justin Dart, Jr. Student Accessibility Center](#). If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with *anyone* without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

Webcams

Access to a webcam is required for participating in this course. Turning on your webcams during class contributes to a more interactive climate.

Title IX/Sexual Misconduct

Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

Syllabus Changes

Please note that I may need to make modifications to the course syllabus. Notice of such changes will be announced as quickly as possible through Canvas.

SYLLABUS

- Jan 17, 2023:** **1. Introduction**
- H. Subcomm. on Antitrust, Com. and Admin. L. of the H. Com. on the Judiciary, [*Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations*](#) (Oct. 2020), pp. 4-14, 61-88, 91-100, 105-110
- Jan 19, 2023:** **2. Connection & Network Effects**
- Video: Network Effects, Kevin Williams, Thurman Arnold Project: [*Network Effects*](#)
 - Mark A. Lemley & David McGowan, [*Legal Implications of Network Economic Effects*](#), 86 CALIF. L. REV. 479 (1998), pp. 481-500
- Jan 24, 2023:** **3. Policy Background**
- Grimmelmann, p. 27-37, 50-56
 - Clinton Administration, [*The Framework for Global Economic Commerce*](#)
 - Optional:
 - o European Ministerial Conference, [*Global Information Networks: Realising the Potential \("Bonn Declaration"\)*](#), pp. 7-17
- Jan 26, 2023:** **4. Data—Guest: Salomé Viljoen, Assistant Professor of Law, University of Michigan Law School**
- Grimmelmann, 17-27
 - Salomé Viljoen, [*A Relational Theory of Data Governance*](#), 131 YALE L.J. (2021), pp. 603-634
- Jan 31, 2023:** **5. Consumer Privacy**
- Grimmelmann, 275-311
- Feb 2, 2023:** **6. Section 230—Guest: Anupam Chander, Scott K. Ginsburg Professor of Law and Technology, Georgetown University Law Center**
- Anupam Chander, How Law Made Silicon Valley, 63 EMORY L. J. 639 (2014), pp. 641-657, 669-676
 - Grimmelmann, 171-194

- Feb 7, 2023:** **7. Algorithms**
- Ifeoma Ajunwa, [The Paradox of Automation as Anti-Bias Intervention](#), 41 CARDOZO L. REV. 1671 (2020), pp. 1673-1707
 - Rebecca Kelly Slaughter with Janice Kopec and Mohamad Batal, [Algorithms and Economic Justice: A Taxonomy of Harms and a Path Forward for the Federal Trade Commission](#), 230 YALE J. L. TECH. (2021), pp. 20-55
- Feb 9, 2023:** **8. Law and the Economic Order of the Digital Economy**
- Amy Kapczynski, [The Law of Informational Capitalism](#), *Review*, 129 YALE L.J. 1460 (2020)
- Feb 14, 2023:** **9. Lightning Presentations & Discussion**
- Feb 16, 2023:** **10. NO CLASS**
- Feb 21, 2023:** **11. Antitrust for Digital Markets: Introduction**
- Videos:
 - o Fiona Scott Morton, [The Economics of Antitrust](#)
 - o Fiona Scott Morton, [Monopoly](#)
 - Congressional Research Service, [Antitrust Law: An Introduction](#)
 - Congressional Research Service, [Antitrust and “Big Tech”](#)
- Feb 23, 2023:** **12. Antitrust: Big Tech & Revival**
- Lina M. Khan, [Amazon’s Antitrust Paradox](#), 126 YALE L.J. 710 (2017), pp. 712-754, 790-802
 - Tim Wu, [The Utah Statement: Reviving Antimonopoly Traditions for the Era of Big Tech](#) (Nov, 18, 2019)
 - Biden Administration, [FACT SHEET: Executive Order on Promoting Competition in the American Economy](#)
 - Optional
 - o Lina M. Khan, [The End of Antitrust History Revisited](#), 133 HARV. L. REV. 1655 (2020)
 - o Darren Bush, [What’s Behind Amazon’s Demand that FTC Chair Lina Khan Recuse Herself?](#) (Aug. 24, 2021)
- Feb 28, 2023:** **13. Antitrust: Tech Mergers**
- Mark Glick, Catherine Ruetschlin & Darren Bush, [Big Tech’s Buying Spree and the Failed Ideology of Competition Law](#), 72 UC HASTINGS LAW JOURNAL 465 (2021), pp. 467-486, 505-511
 - Colleen Cunningham, Florian Ederer & Song Ma, *Killer Acquisitions*, 129 J. POL. ECON. 649 (2020), pp. 649-656, 696-697
- Mar 2, 2023:** **14. Antitrust: Enforcement, Facebook**

- *Team A*: [First Amended Complaint](#), FTC v. Facebook, No. 1:20-cv-03590, Doc. 75-1 (D.D.C. Aug. 19, 2021)
- *Team B*: Motion to Dismiss, [Memorandum in Support](#), FTC v. Facebook, No. 1:20-cv-03590, Doc. 83-1 (D.D.C. Oct. 04, 2021)

Mar 7, 2023:

15. Content Moderation, Competition, & Monopoly Harm

- Grimmelmann, 563-598
- Marshall Steinbaum, [Establishing Market and Monopoly Power in Tech Platform Antitrust Cases](#), 67 THE ANTITRUST BULLETIN 1 (2022), pp. 10-13
- Nikolas Guggenberger, *Moderating Monopolies*, 38 BERKELEY TECH. L.J. (forthcoming 2023), PP. TBA

Mar 9, 2023:

16. Antitrust: Enforcement, Rideshare—Guest: Marshall Steinbaum, Assistant Professor, Economics Department, University of Utah

- Complaint, Gill v. Uber Technologies, Inc. (S.F. Super. Ct. June 20, 2022)

Mar 21, 2023:

17. Antitrust & Privacy

- Erika Douglas, [The New Antitrust/Data Privacy Law Interface](#), 130 Yale L.J. 647 (2021)

Mar 23, 2023:

18. Public Utilities, Common Carriage, Access Rights & Essential Facilities

- K. Sabeel Rahman, [The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept](#), 39 Cardozo L. Rev. 1621 (2018)
- Optional: Nikolas Guggenberger, [Essential Platforms](#), 24 Stan. Tech. L. Rev. 237 (2021)

Mar 28, 2023:

19. Structural Reforms

- Lina M. Khan, [The Separation of Platforms and Commerce](#), 119 COLUM. L. REV. 973 (2019), pp. 976-983, 1015-1037, 1052-1065, 1077-1090

Mar 30, 2023:

20. Interoperability & Middleware

- Michael Kades & Fiona Scott Morton, [Interoperability as a Competition Remedy for Digital Networks](#)
- Francis Fukuyama et al., [Report of the Working Group on Platform Scale](#) (2020), p. 30-38
- Optional:

- Mike Masnick, [*Protocols, Not Platforms: A Technological Approach to Free Speech*](#), KNIGHT FIRST AMENDMENT INST. (Aug. 29, 2019)

Apr 4, 2023:	21. Politics & Antitrust/Competition Policy Reform Bills <ul style="list-style-type: none">- Ken Buck, <i>The Third Way</i> (Oct. 2020)- Congressional Research Service, <i>The Big Tech Antitrust Bills</i>- Caitlin Chin, <i>Breaking Down the Arguments for and against U.S. Antitrust Legislation</i> (Apr. 22, 2022)
Apr 6, 2023:	22. Writing in Class & Time to Discuss
Apr 11, 2023:	23. Writing in Class & Time to Discuss
Apr 13, 2023:	24. Presentations & Feedback
Apr 18, 2023:	25. Presentations & Feedback
Apr 20, 2023:	26. Presentations & Feedback
Apr 25, 2023:	27. Writing in Class & Time to Discuss
Apr 27, 2023:	28. Writing in Class & Time to Discuss