Transnational Legal Ordering of Privacy and Speech

September 11–12, 2020
UCI School of Law

Session 1 **Friday, 11 September 2020**

8 a.m. – 12:00 p.m. PDT (50-minute sessions & 5-minute breaks; 7-9 minutes for presentations, and 7 minutes of comments from discussants, followed by general discussion)

Welcome: David Kaye, Greg Shaffer, and Ally Myers (Editor-in-Chief, *UCI Journal of International, Transnational and Comparative Law*)

Introduction: Greg Shaffer, UCI Law: *On Conceptualizing and Theorizing Transnational Legal Ordering*
General Discussion, Questions, and Observations re: symposium
Chair: David Kaye

Joris van Hoboken & Ronan Fahy: *Regulating Disinformation in Europe: Implications for Speech and Privacy*
Discussants: Anupam Chander, Georgetown Law School; Daphne Keller, Stanford Law School
Chair: Greg Shaffer

evelyn douek: *The Limits of International Law in Content Moderation*
Discussants: David Kaye, UCI Law; Evelyn Aswad, University of Oklahoma School of Law
Chair: Greg Shaffer

Deirdre Mulligan: *Moderating Moderation: Distributing Power in Content Governance*
Discussants: KS Park, Korea National University Law School
Chair: David Kaye

Session 2 **Friday, 11 September 2020**

1 p.m. – 3:00 p.m. PDT (50-minute sessions & 5-minute breaks; 7-9 minutes for presentations, and 7 minutes of comments from discussants, followed by general discussion)

KS Park: *Data as Public Goods or Private Properties?: Data socialism as a way out of conflict between data protection and free speech*
Discussants: Deirdre Mulligan, UC Berkeley School of Information; Jack Lerner, UCI Law
Chair: Greg Shaffer

Anupam Chander & Shyhtsun Felix Wu: *The Globalization of #BlackLivesMatter*
Discussants: Michele Goodwin, UCI Law; Chinmayi Arun, Yale Law School
Chair: David Kaye

UCI Law
Center on Globalization, Law, and Society

Session 3   **Saturday, 12 September 2020**
8 a.m. – 12:00 p.m. PDT (50-minute sessions & 5-minute breaks; 7-9 minutes for presentations, and 7 minutes of comments from discussants, followed by general discussion)

Elena Sherstoboeva: *Trends in East Asian Policies on Digital Surveillance Tools During the COVID-19 Pandemic*
Discussants: Greg Shaffer, UCI Law; Jennifer Daskal, American University School of Law
Chair: David Kaye

Jennifer Daskal: *The Privacy-Speech Overlap*
Discussants: Elena Sherstoboeva, City University of Hong Kong; evelyn douek, Harvard Law School
Chair: Greg Shaffer

Chinmayi Arun: *The CLOUD Act and Non-US Persons*
Discussants: Chris Whytock, UCI Law; Joris van Hoboken, Vrie Universiteit Brussels/University of Amsterdam
Chair: David Kaye

Conclusion: David Kaye, UC Irvine School of Law
Chair: Greg Shaffer

Next Steps: David Kaye, Greg Shaffer, and Ally Myers

Participants

Chinmayi Arun
Assistant Professor of Law, National Law University Delhi

Chinmayi Arun is an Assistant Professor of Law at National Law University Delhi, where she is also the Executive Director of the Centre for Communication Governance. She is a member of the Indian Government's multi stakeholder advisory group for the India Internet Governance Forum, a member of UNESCO India's Press Freedom committee and has been a consultant to the Law Commission of India in the past. She is also a Faculty Associate of the Berkman Klein Centre at Harvard University. Professor Arun has published academic papers on surveillance and the right to privacy in India, and on information gatekeeper liability in the context of internet intermediaries. She is lead author of the India country report in Freedom House's Freedom on the Net report for 2014 and 2015, and of the India report in the Global Network of Centres' study of online intermediaries.

Evelyn Aswad
Professor of Law & Herman G. Kaiser Chair in International Law,
The University of Oklahoma College of Law

Evelyn Aswad is a Professor of Law and the Herman G. Kaiser Chair in International Law at The University of Oklahoma College of Law. She is also the Director of the Center for International Business and Human Rights. Prior to joining the College of Law, Professor Aswad served for about 14 years as an attorney in the Legal Bureau at the U.S. Department of State, most recently as the head of the Office of Human Rights and Refugees. Professor Aswad serves on the Advisory Committee on International Law to the U.S. Department of State's Office of the Legal Adviser. Professor Aswad was named outstanding faculty member by College of Law students in 2014, received the university-wide David L. Boren Award for Outstanding Global Engagement in 2016, and the World Experiences Foundation's Citizen in Law/Politics Award in 2017.

Anupam Chander
Professor of Law, Georgetown Law

The author of the widely-reviewed book, *The Electronic Silk Road* (Yale University Press), Professor Chander is an expert on the global regulation of new technologies. A graduate of Harvard College and Yale Law School, he clerked for Chief Judge Jon O. Newman of the Second Circuit Court of Appeals and Judge William A. Norris of the Ninth Circuit Court of Appeals. He practiced law in New York and Hong Kong with Cleary, Gottlieb, Steen & Hamilton. He has been a visiting law professor at Yale, the University of Chicago, Stanford, Cornell, and Tsinghua. He previously served as the Director of the California International Law Center and Martin Luther King, Jr. Professor of Law at UC Davis. A member of the American Law Institute, he has also served on the Executive Council of the American Society of International Law, where he co-founded the International Law and Technology Interest Group.

Jennifer Daskal
Professor of Law, American University Washington College of Law

Jennifer Daskal is a Professor and Faculty Director of the Tech, Law, Security Program at American University Washington College of Law, where she teaches and writes in the fields of cyber, national security, criminal and constitutional law. From 2009-2011, Professor Daskal worked as the counsel to the Assistant Attorney General for National Security at the Department of Justice. Prior to joining DOJ, Professor Daskal was senior counterterrorism counsel at Human Rights Watch, worked as a staff attorney for the Public Defender Service for the District of Columbia, and clerked for the Honorable Jed S. Rakoff. She also spent two years as a national security law fellow and adjunct professor at Georgetown Law Center. From 2016-2017, she was an Open Society Institute Fellow working on issues related to privacy and law enforcement access to data across borders. She is currently a Scholar-in-Residence at New America.

evelyn douek
S.J.D. Candidate, Harvard Law School

evelyn douek is a lecturer on law and S.J.D. candidate at Harvard Law School, and Affiliate at the Berkman Klein Center For Internet & Society. She studies global regulation of online speech, private content moderation institutional design and comparative free speech law and theory. Her supervisors are Professors Martha Minow, Jack L. Goldsmith and Cass R. Sunstein. Prior to coming to HLS, evelyn was an Associate (clerk) to the Honourable Chief Justice Susan Kiefel of the High Court of Australia. She also worked in commercial litigation at Herbert Smith Freehills and Corrs Chambers Westgarth in Sydney. She graduated with First Class Honours from the University of New South Wales with a Bachelor of Commerce/ Laws in 2013, where she was the Executive Editor of the *UNSW Law Journal* and the Undergraduate Student Representative on UNSW Council, the University's governing body.

Ronan Fahy
Senior Researcher, Institute for Information Law (IViR),
University of Amsterdam

Ronan is a Senior Researcher at the Institute for Information Law (IViR), University of Amsterdam, and specialises in fundamental rights, in particular freedom of expression and privacy. He is a member of the Digital Transformation of Decision-Making research initiative at the Amsterdam Law School, examining the normative implications of the shift toward automated decision-making, and the effect on democratic values and fundamental rights. He has published his work in a number of international academic journals, including *Communications Law*, *Journal of Media Law*, *European Human Rights Law Review*, *European Data Protection Law Review*, *Internet Policy Review*, and *Utrecht Law Review*, and is a regulator contributor to the *Strasbourg Observers* blog, commenting on current human rights issues.

Michele Goodwin
Chancellor's Professor of Law, UCI School of Law

Michele Bratcher Goodwin is a Chancellor's Professor of Law at UCI School of Law and founding Director of the Center for Biotechnology and Global Health Policy. She is also faculty in the Stem Cell Research Center; Gender and Sexuality Studies Department; Program in Public Health; and the Department of Criminology, Law, & Society. She is an elected member of the American Law Institute as well as an elected Fellow of the American Bar Foundation and the Hastings Center. She is an American Law Institute Adviser for the Restatement Third of Torts: Remedies. Professor Goodwin has been a Visiting Professor at the University of Chicago and University of Virginia law schools. Professor Goodwin's scholarship is hailed as "exceptional" in the *New England Journal of Medicine*. She has been featured in *Politico*, *Salon. com*, *Forbes*, *The Washington Post*, *The New York Times*, *Los Angeles Times*, *The Boston Globe*, *Chicago Sun-Times*, *NPR*, *HBO's Vice New*s, and *Ms. Magazine* among others.

Joris van Hoboken
Professor of Law, Vrije Universiteit Brussels (VUB)

Joris van Hoboken is a Professor of Law at the Vrije Universiteit Brussels (VUB) and a Senior Researcher at the Institute for Information Law (IViR), University of Amsterdam. Professor van Hoboken works on the intersection of fundamental rights protection (data privacy, freedom of expression, non-discrimination) and the governance of platforms and internet-based services. He is a specialist in European data protection, algorithmic governance and the regulation of internet intermediaries. At VUB, Professor van Hoboken was appointed to the Chair "Fundamental Rights and the Digital Transformation", which is established at the Interdisciplinary Research Group on Law Science Technology & Society (LSTS), with the support of Microsoft.

David Kaye
Clinical Professor of Law, UCI School of Law

David Kaye is a Clinical Professor of Law at UCI School of Law and the former United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (2014-2020). Appointed by the UN Human Rights Council in June 2014, Professor Kaye served through July 2020 as the global body's principal monitor for freedom of expression issues worldwide. He reported to the UN on COVID-19 and freedom of expression and, in 2019, to the UN General Assembly on online hate speech. His earlier reporting addressed, among other topics, the ways in which artificial intelligence technologies implicate human rights issues, the global private surveillance industry and its impact on freedom of expression, growing repression of freedom of expression globally, encryption and anonymity as promoters of freedom of expression, the protection of whistleblowers and journalistic sources, and the roles and responsibilities of private Internet companies.

Daphne Keller
Lecturer in Law, Stanford Law School

Daphne Keller's work focuses on platform regulation and Internet users' rights. She has testified before legislatures, courts, and regulatory bodies around the world, and published both academically and in popular press on topics including platform content moderation practices, constitutional and human rights law, copyright, data protection, and national courts' global takedown orders. Her recent work focuses on legal protections for users' free expression rights when state and private power intersect, particularly through platforms' enforcement of Terms of Service or use of algorithmic ranking and recommendations. Until 2020, Keller was the Director of Intermediary Liability at Stanford's Center for Internet and Society. She also served until 2015 as Associate General Counsel for Google, where she had primary responsibility for the company's search products. Keller has taught Internet law at Stanford, Berkeley, and Duke law schools.

Jack Lerner
Clinical Professor of Law, UCI School of Law

Jack Lerner is a Clinical Professor of Law at UCI School of Law. Professor Lerner's work focuses on problems at the intersection of law and technology, particularly how technology law and policy affect innovation and creative expression. He has written and spoken widely on copyright, privacy and other areas of technology law.

Deirdre Mulligan
Associate Professor, UC Berkeley School of Information

Deirdre K. Mulligan is an Associate Professor in the School of Information at UC Berkeley, a faculty Director of the Berkeley Center for Law & Technology, a co-organizer of the Algorithmic Fairness & Opacity Working Group, an affiliated faculty on the Hewlett funded Berkeley Center for Long-Term Cybersecurity, and a faculty advisor to the Center for Technology, Society & Policy. Professor Mulligan's research explores legal and technical means of protecting values such as privacy, freedom of expression, and fairness in emerging technical systems. Her book, *Privacy on the Ground: Driving Corporate Behavior in the United States and Europe*, a study of privacy practices in large corporations in five countries, conducted with UC Berkeley Law Professor Kenneth Bamberger was recently published by MIT Press. Professors Mulligan and Bamberger received the 2016 International Association of Privacy Professionals Leadership Award for their research contributions to the field of privacy protection.

Allyson Myers
Editor-in-Chief, International Law Journal, UCI School of Law

Ally Myers is a JD Candidate at UCI School of Law. She is the editor-in-chief of the *Journal of International, Transnational, and Comparative Law* and a fellow in the Center on Globalization, Law, and Society. She holds a Bachelor's degree in English Literature from Willamette University and a Master's degree in Linguistics from San Diego State University.

KS Park
Professor of Law, Korea University School of Law

Kyung Sin "KS" Park is a Professor at the Korea University School of Law, and co-founder and Executive Director of www.opennetkorea.org. He served as Commissioner at the Korean Communication Standards Commission, a presidentially appointed internet content regulation body (2011-2014), and as a member of the National Media Commission, a Parliament-appointed advisory body on newspaper-broadcasting co-ownership bans and other media and Internet regulations (2010). He also served as International Relations Counsel to the Korea Film Council, arranged the Korea-France Film Co-production Treaty, and advised on the UNESCO Cultural Diversity Convention (2002-2007). He is Executive Director for both the PSPD Law Center (2008-) and Open Net Korea (2013-), which have pursued and won several high profile litigation and legislative actions in the areas of freedom of speech, privacy, net neutrality, web accessibility, digital innovation, and intellectual property.

Gregory Shaffer
Chancellor's Professor of Law, UCI School of Law

Gregory Shaffer is a Chancellor's Professor of Law and Director of the Center on Globalization, Law, and Society (GLAS) at UCI School of Law. Professor Shaffer writes theoretically and empirically on international economic law and law and globalization. His publications include seven books and over one hundred articles and book chapters. The work is cross-disciplinary, addressing such topics as transnational legal ordering, legal realism, hard and soft law, comparative institutional analysis, public-private networks in international trade, the rise of China and other emerging economies, and the ways trade and investment law implicate domestic regulation and social and distributive policies.

Elena Sherstoboeva
Assistant Professor, School of Creative Media, School of Law, City University of Hong Kong
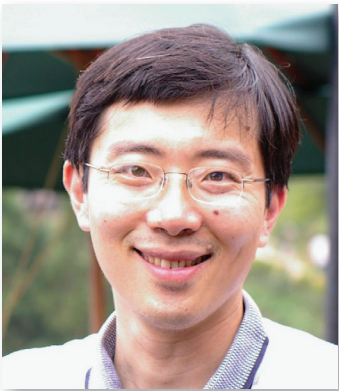
Elena Sherstoboeva is a media & entertainment law researcher and legal practitioner. Her most recent research and expert projects focus on digital piracy as well as online content regulation and policies in the context of international legal standards. She has a diverse experience in research, teaching and providing expert reviews in media & entertainment law for academia, industry and international organisations. Before joining the School of Creative Media, she worked as a Professor in the School of Media at the National Research University Higher School of Economics (2012-2019), one of the leading universities in Russia. In 2018, Professor Sherstoboeva was a visiting lecturer at the University of Copenhagen. She was also a visiting fellow at the University of Pennsylvania (2015-2016) and the University of Leeds (2013).

Christopher Whytock
Vice Dean, Professor of Law and Political Science, UCI School of Law

Christopher Whytock is Vice Dean and Professor of Law and Political Science at the University of California, Irvine, and Co-Director of the UCI Center in Law, Society and Culture. In 2013, the American Law Institute appointed Professor Whytock to serve as an adviser on the new Restatement (Fourth) of the Foreign Relations Law of the United States, and in 2014 the ALI appointed him to serve as an associate reporter for the new Restatement (Third) of Conflict of Laws. Professor Whytock's research focuses on transnational litigation, conflict of laws, international law, and the role of domestic law and domestic courts in global governance. His scholarship has appeared in law journals including *Columbia Law Review*, *Cornell Law Review*, *New York University Law Review* and *University of Pennsylvania Law Review*, and peer-reviewed social science journals including *International Security*.

Shyhtsun Felix Wu
Professor of Computer Science, UC Davis

Professor Wu is an experimental computer scientist and educator working on interdisciplinary challenges for social good, and the necessary technology innovations to support that vision. His recent focus topics include disinformation, explainable social algorithms, data privacy and ethics, adversarial machine learning, intrusion detection systems, and future Internet design. Professor Wu has 150+ academic publications and his H-index is currently 45. Professor Wu developed three patents in Intrusion Detection systems around 2002, and one of them, US7203963B1 (for McAfee), was acquired by JP Morgan Chase Bank in 2018. He has mentored 30+ PhD theses, and all of his PhD advisees are contributing at government, academics and industrial companies such as Facebook, LinkedIn, Google, NVIDIA, AWS, Cisco, Intel, Reddit, and Proofpoint.