Message from the Chair

Dog days of summer indeed! We are busy at Cyberspace Committee HQ - although HQ is anywhere in the world these days, and I am writing this from Israel. Even so, I am getting ready for the ABA Annual Meeting August 2 - 5 in Chicago, where the Cyberspace Committee will present and co-sponsor several CLE programs. Our committee meeting is Friday afternoon, and our two CLE programs are Friday morning at 8 am and Sunday afternoon at 2:30, with several co-sponsored programs in between. Please plan to arrive by Thursday evening and stay through Sunday. And make sure that you attend our committee meeting on Friday afternoon! We will also have an informal gathering on Thursday evening for those arriving by then, plus the formal committee dinner on Friday night (with the IP Committee this time).

Two of our subcommittees will present programs: one on recent developments in cyber-insurance policies and practices, and a second on the developing notion of a right to privacy in your internet "persona." We will also co-sponsor programs on recent developments in mobile payments laws and regulations worldwide, and we will once again look at how contracts are formed in an online context as we consider the latest developments in judicial treatment of disputes about "click-through" and "browse-wrap" agreements (or, more generally, the website terms of use we see every day). This is an area the Cyberspace Committee first analyzed closely over ten years ago.

The complete schedule is listed below with more details on our CLE programs in the Mobile Commerce Subcommittee and Financial Services and Payments Subcommittee reports also in this newsletter. All Cyberspace Committee programs take place at the Chicago Marriott Downtown (540 N. Michigan Avenue).

I look forward to seeing you in Chicago.

Jonathan T. Rubens  
Chair, Cyberspace Law Committee, Business Law Section  
Jon@jrlegalgroup.com

Upcoming CLCC Programs

ABA Annual Meeting - August 2-5, 2012

This year's ABA Annual Meeting will be held in Chicago. Register now if you haven't yet done so. Here's the line-up:

Thursday, August 2

5:30 - ???: Informal cocktail gathering for Cyberspace Law Committee members at a private home about a 15-minute walk from the Chicago Marriott Downtown, followed by small-group dinners at nearby restaurants. This is not an ABA-sponsored event. If you would like to join your fellow committee members, please email Cheryl Balough by July 26.

Friday, August 3

Cyber News You Can Use

New gTLDs Are Here

Presentations and Papers of Interest

Mobile Payments on the Move

Social Media, Online and Mobile Commerce

Quiz Winner

Your Name Here
8 - 10 am, Armitage/Belmont Rooms, 4th floor
*Insuring for Cyber Threats: Everything a Business Lawyer Wants to Know (But May Be Afraid to Ask).* See the Financial Services and Payments Subcommittee report below for more details.

2 - 5 pm, Kane Room, 3rd Floor
*Cyberspace Law Committee Meeting.* Come join us at the committee meeting, in its expanded, super-session format, for a series of focused, topical presentations and some committee business. We will have committee members and special guests presenting on:

- International Internet Governance and Regulation: a Report of Our Internet Governance Task Force
- Data Wars: or How I Learned to Stop Worrying and Love Big Data
- Criminal Liability and Copyright Infringement: the Latest from the Virtual Trenches
- The Expanded Top Level Domain Rollout: Report on Developments
- Top 10 Internet & Cyberlaw Developments of 2012

6 - 8:30 pm, Maxwell's, in the East Bank Club, 500 N. Kingsbury Street (10-minute walk from the Chicago Marriott Downtown)
*Cyberspace Committee Dinner* with the IP Committee. The evening begins with a reception on the restaurant's terrace overlooking the Chicago River. [Get your tickets now!](http://www.abanet.org/businesslaw/conferences/2013winter.html)

**Saturday, August 4**

8 - 9 am, Denver Room, 4th floor
Meeting of the subcommittees and working groups and task forces. Any of our committees or task forces who want to hold mini-meetings will use this time slot.

2:30 - 4:30 pm, Addison Room, 4th floor

2:30 - 4:30 pm, Chicago Ballroom D, 5th floor
*Understanding Mobile Payments and Banking: Global Harmony and Discord.* Consumer Financial Services program, co-sponsored by Cyberspace Law Committee.

**Sunday, August 5**

8:00 - 10:00 am, Chicago Ballroom D, 5th floor
*Clickwraps, Browsewraps, and Does ESIGN Deserve a Bum Rap.* Consumer Financial Services program, co-sponsored by Cyberspace Law and Corporate Compliance Committees.

10:30 am - 12:30 pm, Chicago Ballroom A/B, 5th floor
*Thunderclouds on Your Horizon? What Happens If Your Cloud Provider Becomes Insolvent?* International Coordinating Committee program, co-sponsored by Cyberspace Law Committee. See the Cloud Computing and IT Services Subcommittee report below for more details.

2:30 - 4:30 pm, Addison Room, 4th floor
*Does Your Internet Persona Have a Right to Privacy?* Attorneys and Authors Debate the Effects of Law, Regulations and Profits on the Rapidly Evolving Internet Identity. See the Mobile Commerce Subcommittee report below for more details. This program comes at the tail end of things … but do stick around!

**Cyberspace Committee Winter Working Meeting - January 2013**

**Kristine Dorrain, CLCC Programming Director**

We are already planning for next year's Institute on the Law of Cyberspace and Winter Working Meeting, which will include at least four hours of CLE credit. It will be held in Los Angeles near UCLA at the W Hotel in Westwood on the weekend of January 24-26. Please plan to fly in Thursday night and fly out Sunday morning, so as to not miss any of the programming, working group meetings, and entertainment.

The CLE programming will include shorter presentations on topics of greater depth or more narrow focus than typically presented at the Business Law Section spring meeting or ABA annual meeting. We will also offer roundtables again, as a way to
complement and serve as a springboard for subcommittee meetings and projects. Roundtables are the place where we meet to discuss a hot topic and engage in lively debate on important issues. We are looking for roundtable moderators who will present the topic and keep the discussion focused, but will not actually teach or lecture.

Here are a few particulars about the CLE:

1. CLE sessions will be about 30 minutes long with no more than 1-2 presenters per program.
2. This is really CLE, so original written materials are required and will need to be submitted by mid-December at the latest.
3. The audience will be fairly acquainted with the basic knowledge, so in-depth, concentrated sessions are welcomed.
4. If you're new to the committee, this is a great way for us to get to know you and your expertise!

If you're interested in presenting a CLE session or moderating a roundtable, please email Kristine Dorrain and provide a paragraph of 6-10 sentences describing your proposed topic and why you think it's on the cutting edge of the intersection of cyberspace and business law.

ABA Business Law Section Spring Meeting - April 2013

The 2013 Business Law Section Spring Meeting will be held in Washington, DC, on April 4-6. Mark your calendars now.

Other Programs of Interest

CLE Programs

Ethical Challenges on the Horizon: Confidentiality, Competence, and Cloud Computing
July 24, 2012
Location: N/A
Format: Webinar/Teleconference

Electronic Discovery for the Rest of Us: Bringing Proportionality Back to e-Discovery
July 25, 2012
Location: N/A
Format: Webinar/Teleconference

Trademark Prosecution: Lessons from the Trenches
July 27, 2012
Location: N/A
Format: Webinar/Teleconference

News from the BLS Professional Responsibility Committee
Juliet M. Moringiello, Professor at Widener University School of Law

In last month's Cyberspace Law Committee newsletter, I reported that the Business Law Section Professional Responsibility Committee has established a new subcommittee on Information Technology Issues in Ethics and Professional Responsibility (and that I'm the chair of that new subcommittee). One of the subcommittee's charges is to comment on the proposals of the Ethics 20/20 Commission relating to technology. Several Cyberspace Law Committee members, including Jon Rubens and Chris Kunz, have submitted thoughtful comments with respect to proposals on technology and confidentiality and technology and client development.

We need more help from Cyberspace Law Committee members, though. The Ethics 20/20 Commission, through one of its working groups, has been studying the issue of when a lawyer's "virtual presence" in a jurisdiction becomes a "systematic and continuous presence" for purposes of Model Rule 5.5(b)(1), requiring the lawyer to be admitted to practice in the jurisdiction. I have posted the Commission's Issues Paper to the subcommittee's website. I am sure that our members have opinions on the issue of "virtual presence," so please take a look at the Issues Paper and let me know your thoughts (at jmmoringiello@widener.edu) by July 15 so that I can pass them on
to Charlie McCallum, the chair of the Professional Responsibility Committee. And join the subcommittee - there's a lot of work to be done!

SciTech LinkedIn Group

The ABA SciTech Section has recently started to post articles and discussions on LinkedIn. If you are a LinkedIn member, you can check out its three groups: SciTech Social Networking Committee, ABA SciTech Special Committee on Homeland Security, and YLD SciTech. If you are not yet a LinkedIn member, you can join [here](http://apps.americanbar.org/buslaw/committees/CL320000pub/newsletter/201207/).

CLCC Projects

Get Recognition for Your Work

Please remember that Kristine Dorrain and Sarah Jane Hughes need to report on all the work that may find its way to print from the Cyberspace Law Committee. This includes books, peer-reviewed business law articles (not survey pieces), Business Law Today submissions, model agreements, best-practices projects, and anything else. Presentations that might "rise" into written pieces or that the author(s) might share can be included. Content management and inventory appear to be taking a higher priority in the Business Section generally, and we want this prolific group to be represented in the inventory by the time of the ABA Annual Meeting. If you have any questions, please contact Kristine or Sarah Jane.

Update from the Mobile Commerce Subcommittee

Co-Chairs Richard Balough and Ted Claypoole

At the ABA Annual Meeting, the mCommerce Subcommittee is sponsoring a panel discussion entitled "Does Your Internet Persona Have a Right to Privacy?" It features Lori B. Andrews, director of the Institute for Science, Law and Technology at Chicago-Kent College of Law, and Theodore F. Claypoole, co-chair of the mCommerce Subcommittee. Both have recently written books on the subject. Mr. Claypoole's book is Protecting Your Internet Identity. Are You Naked on the Internet?, and Ms. Andrews' book is I Know Who You Are and I Saw What You Did: Social Networks and the Death of Privacy. The presentation will be on Sunday, August 5, from 2:30 to 4:30 pm.

The subcommittee is also developing an annotated model of a bring your own devices (BYOD) policy for business lawyers. To facilitate development of the BYOD policy, the subcommittee is seeking volunteers to help draft the model and is seeking existing BYOD policies. The subcommittee has targeted late fall 2012 for completion of the project. Interested persons should contact Richard Balough or Ted Claypoole.

From the Cloud Computing and IT Services Subcommittee

Co-Chairs William Denny and Phillip Schmandt

Bill Denny and Warren Agin will be panelists for a program at the ABA Annual Meeting entitled "Thunderclouds on Your Horizon? What Happens If Your Cloud Provider Becomes Insolvent?" This program will look at what could happen to a company's (or individual's) data, records, emails, and business operations if its cloud provider becomes insolvent. How could that insolvency affect access to business and personal records, emails, and other information? Is the answer different if the cloud provider is outside the US? Or if the user is outside the US? Come and hear what the implications could be for your business. The program is scheduled for Sunday, August 5, from 10:30 am to 12:30 pm.

Update from the Financial Services and Payments Subcommittee

Co-Chairs Ed Morse and Stephen Middlebrook

Members of our subcommittee, including Janice Hugener, Winston Krone, John Black, and Ed Morse, are scheduled to provide a CLE program at the ABA Annual Meeting from 8:00 to 10:00 am on Friday, August 3, on the topic "Insuring for Cyber Threats: Everything a Business Lawyer Wants to Know (But May Be Afraid to Ask)." The panel includes both practitioners and representatives from the insurance industry familiar with insurance products that address various aspects of data security and/or privacy breaches occurring within the business environment.

Update from the Cybersecurity Subcommittee

Co-Chairs Roland Trope and Tom Smedinghoff

http://apps.americanbar.org/buslaw/committees/CL320000pub/newsletter/201207/
The Cybersecurity Subcommittee is continuing to seek volunteers for its three projects:

- A lawyer's guide to cybersecurity issues for clients considering the adoption and use of cloud computing;
- A guide to cybersecurity for museums; and
- A lawyer's guide to cybersecurity issues for clients preparing to adopt and deploy electrical "smart grid" technologies, or whose enterprise security and resilience will depend on "smart grid" cybersecurity.

Please contact Roland Trope or Tom Smedinghoff if you would like to get involved or have any questions.

**Consumer Protection Subcommittee Update**

*Co-Chairs John Rothchild and James Nehf*

The Consumer Protection Subcommittee is still looking for a few more volunteers to update the ABA's www.safeshopping.org website. This is a great opportunity to contribute to an important ABA initiative, and it is particularly well suited for young lawyers with an interest in e-commerce. We would like to update the site to reflect current laws and practices, as well as expand and enhance it so it is helpful not only to consumers but also to attorneys who assist consumers and small businesses in Internet transactions.

The nine subject areas on the website are:

1. **Security** (secure Internet connections, password protection, virus protection, etc.)
2. **Privacy** (privacy policies, cookies, spyware, anonymous browsing, etc.)
3. **Payment** (payment options, identity theft, etc.)
4. **Seller** (seller's reputation, avoiding scams, dealing with spam, assessing reliability, etc.)
5. **Product** (getting the best price, product authenticity, verifying orders, shipping costs, cancellation rights)
6. **Terms** (finding contract terms, their legal importance, return policies, warranties, arbitration clauses, forum selection clauses, etc.)
7. **Delivery** (delivery charges, FTC 30-day rule, etc.)
8. **Records** (keeping records of transactions and messages, changes to websites, etc.)
9. **Complaints** (bbbonline, attorney general offices, FTC complaints, dispute resolution options)

Contact subcommittee co-chairs John Rothchild (Wayne State University) or James Nehf (Indiana University) for more information.

**Update from the Identity Management Legal Task Force**

*Chair Tom Smedinghoff*

The Identity Management Legal Task Force is continuing to work on the second draft of its Report tentatively titled "Solving the Legal Challenges of Online Identity Management." It is expected to be available for review and comment in early August 2012. The first draft of the Report has been posted on the Task Force website since December 2011.

The Task Force also recently submitted a paper about identity management to the United Nations Commission on International Trade Law (UNCITRAL). The paper provides an overview of digital identity management, its role in e-commerce, the legal issues it raises, and the legal barriers it presents. A copy of the submission is posted on the Task Force website. Please contact Tom Smedinghoff if you would like to get involved or have any questions.

**Publication Ideas Sought**

*Kristine Dorrain and Sarah Jane Hughes, Content Directors*

If you or your subcommittee has an idea for an article in *Business Law Today*, a non-Survey piece for *The Business Lawyer*, an article for another journal, or a book or model contract form project that the Business Section might publish, please let Sarah Jane Hughes know.
New gTLDs Are Here
Erik Pelton, Co-Chair Marketing & Advertising Subcommittee

In mid-June, the list of applications for creation of new .ANYTHING generic top-level domain names (gTLDs) was made public. The full ICANN "reveal day" list of new applicants for gTLDs is here. This reveal commenced ICANN's 60-day public comment period and 7-month objection period as part of the public review process. Google and Amazon applied for many names, as did several other companies. For more on the comment and objection periods, see http://www.inta.org/Advocacy/Pages/gTLDs.aspx and http://newgtlds.icann.org/en/

The .app gTLD had the most applications at 13. .home and .inc received 11 each, .art received 10, and .blog, .book, .lic, and .shop each received 9. Donuts.co submitted the most applications, 307, on behalf of various applicant names. Google (Charleston Road Registry, Inc.) had the second most, 101, and Amazon was third with 76. Top Level Domain Holdings (UK) and Famousfourmedia.com (various applicant names) rounded out the top five.

Presentations and Papers of Interest

Mobile Payments on the Move
The Senate Banking Committee has invited Sarah Jane Hughes, University Scholar and Fellow at Maurer School of Law at Indiana University, and Tom Brown, partner at Paul Hastings and adjunct professor at Boalt Hall School of Law, to testify at a full committee hearing on issues pertaining to mobile payments. UC Berkeley Economics Professor Michael Katz is likely to be the third witness at this hearing, to be held July 10. Sarah Jane Hughes recently spoke at a "Consumer Payment Innovation in the Connected Age" panel hosted by the Federal Reserve Bank of Kansas City. Her presentation and those of the other speakers are available here. Rounding out what appears to be the quarter of mobile payments for her, Sarah Jane Hughes was interviewed on June 20th by David Sarno of the LA Times on consumer issues in mobile payments.

Social Media, Online and Mobile Commerce
Lisa R. Lifshitz, who recently joined Torkin Manes as a partner in the firm's business law group, organized and chaired a half-day session in Toronto on Social Media, Online and Mobile Commerce Issues on Monday, June 18. The session was part of the Canadian IT Law Association/Law Society of Upper Canada's 2012 Information Technology Law Spring Forum.

Quiz Winner
Congratulations to the committee's own Cathy Gellis for being on the winning team in the Electronic Frontier Foundation's Cyberlaw Pub Quiz, held recently in San Francisco. More details, photos of the winning team, and a chance to take the quiz for yourself are here.

Your Name Here
We are always looking for fresh and relevant content for the CLCC newsletter. Have you written or presented on something your fellow committee members would be interested in? Let them know! Email your contribution to committee Communications Co-Directors Cheryl Balough and Lois Mermelstein.

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