Message from the Chair

The proposed cybersecurity act of 2012 failed to pass the Senate in August, but many reports suggest the Obama administration will be releasing an executive order on cybersecurity any day. Our Cybersecurity Subcommittee continues to monitor these new developments, and we may have quite a bit of new cybersecurity legal news to review at the committee’s Winter Working Meeting and Institute on the Law of Cyberspace January 24-26, 2013 at the W Hotel in Los Angeles. Registration will open soon, and we’ll have additional program information then. Meanwhile, stay tuned for the soon-to-come 2012 edition of the Annual Survey of Cyberspace Law in The Business Lawyer and a special mini-issue on cyberspace law in an upcoming issue of Business Law Today. And take a look at the latest addition to our line-up of subcommittees and task forces: our new Task Force on Professional Responsibility and Technology. The Task Force plans to work closely with professional responsibility groups within the ABA to help lawyers understand, and stay current on, developments in technology that affect their practice - including recent technology-related updates to the ABA’s Model Rules of Professional Responsibility.

Best regards,
Jonathan T. Rubens
Chair, Cyberspace Law Committee, Business Law Section
jon@irlegalgroup.com

Upcoming CLCC Programs

Cyberspace Committee Winter Working Meeting, January 24-26, 2013
Kristine Dorrain, CLCC Programming Director

Winter Working Meeting planning is now underway. We are excited to bring you the 2013 Institute on the Law of Cyberspace and Winter Working Meeting, including a half-day CLE opportunity to kick off our WWM. It will be held in Los Angeles near UCLA at the W Hotel in Westwood. Please arrive on Thursday and plan to attend ALL DAY on both January 25 and 26 as the days will be packed with CLE, discussions, and work time, as well as chances to mingle and network.

If you are new to this meeting (and/or new to this mailing list), you should know that our annual Winter Working Meeting offers you one of the best ways to get involved with the work of our committee and the Business Law Section. And it is open to everyone - newcomers are highly encouraged to attend! Each of our subcommittee and task force leaders will come to the meeting prepared to work on a project (checklist, website, book, article, program, webinar, etc). All of these sessions will be open to all, so this is a great chance to get directly involved with the projects of the committee. We will have a list of CLE and a tentative schedule available shortly, so you can begin planning. If you’ve submitted a proposal, look for confirmation or some sort of follow-up in the next week or so.

ABA Business Law Section Spring Meeting, April 4-6, 2013

The 2013 Business Law Section Spring Meeting will be held in Washington, DC, on April 4-6. Registration will open in November.
CLCC Projects

Updates from the International Trade Subcommittee
Co-Chairs John Gregory and Hal Burman

UNCITRAL's Working Group on Electronic Commerce meets at the end of October to continue work on electronic transferable records (like bills of lading, warehouse receipts, negotiable instruments etc) - documents that must be unique to keep their value. The Secretariat has just published the main working papers for the meeting: WP 118 and WP.118/Add1. They are on the UNCITRAL site in the working group document section under E-commerce (of course). The US, Spain, and Colombia have also submitted their overview of the issues, as WP.119. In addition, the ABA's (i.e., Cyberspace Committee's) Task Force on Identity Management has submitted a paper on that topic, as WP.120. Not only is ID management be a separate topic, but it relates directly to authentication questions that arise with electronic transferable records. One has to be very confident of the identity of the person who controls the record and the person to whom it is being transferred to make the system work. We have discussed before whether the need for the project had been demonstrated. WP.119 addresses that question directly. The State Department, through the subcommittee's co-chair Hal Burman and the head of the US delegation Mike Coffee, plans a conference call about the forthcoming meeting in October. The call-in details will be circulated to the Subcommittee's mailing list in due course.

Meanwhile the US continues to move towards ratifying the UNCITRAL Electronic Communications Convention of 2005. It may go to the Senate in the near future. The Cyberspace Committee and the Section of Science and Technology have publicly supported ratification. For more information on the subcommittee's activities and work product, visit the subcommittee's web page.

Update from the Cybersecurity Subcommittee
Co-Chairs Roland Trope and Tom Smedinghoff

The Cybersecurity Subcommittee continues to work on the following projects:

1. Guide to Cybersecurity for Clients Migrating to and Using the Cloud (see below)
2. Guide to Cybersecurity for the Smart Grid
3. Guide to Cybersecurity for Musuems

Tom Smedinghoff and Roland Trope are also participating as representatives from the Cyberspace Law Committee on the Steering Committee of the new ABA Task Force on Cybersecurity. A draft of "core principles" has been circulated and, according to the Task Force Chairs, there are to be meetings to introduce and get comment on the draft.

The subcommittee plans to do two CLE programs and one roundtable at the forthcoming Winter Working Meeting in LA: topics will be cybersecurity for the cloud and cybersecurity issues related to the grid, with a more general cybersecurity issues discussion for the roundtable. Please contact Roland Trope or Tom Smedinghoff if you would like to get involved with any of the projects or have any questions.

The Cybersecurity Subcommittee's Guide to Cybersecurity project aims to produce an annotated checklist of critical security and privacy questions that will be useful for companies or government entities that are considering outsourcing data to a cloud provider. Lisa R. Lifshitz and Ariane Siegel are leading this project; their goal is to have a first draft of questions in time for the Winter Working Meeting. Volunteers are welcome. If interested, please feel free to contact either Ariane Siegel or Lisa Lifshitz.

Update from the Mobile Commerce Subcommittee
Co-Chairs Richard Balough and Ted Claypoole

A working draft of a model "bring your own device" (BYOD) policy is being circulated among the Mobile Commerce Subcommittee members for comments and revisions. It's designed to help lawyers in drafting policies for their business clients who allow employees to bring their own smart phones, tablets, and laptops to the office and use them to access the employer's network. Committee member comments on the current draft are invited and will be incorporated into the next version. The policy will be finalized at the Winter Working Meeting in Los
Angeles January 24-26, 2013. Any interested person should contact one of the co-chairs, Richard Balough or Theodore Claypoole.

Consumer Protection Subcommittee Update  
Co-Chairs John Rothchild and James Nehf

The Consumer Protection Subcommittee continues to work revising the safeshopping.org website. The subcommittee could still use a couple more volunteers. It is not a lot of work and is a great opportunity to contribute to one of the ABA's more popular public service websites. To get involved or for more information, contact subcommittee co-chairs John Rothchild (Wayne State University) or James Nehf (Indiana University).

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.

Committee Advocacy

Update from the Identity Management Task Force  
Chair Tom Smedinghoff

Last May, pursuant to the ABA blanket authority process, the Identity Management Task Force submitted a paper about identity management to the United Nations Commission on International Trade Law (UNCITRAL) in connection with its deliberations on e-commerce. That paper has now been translated into the six official UN languages and published by UNCITRAL as document WP.120 for use at its upcoming meeting. 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. This paper focuses on commercial identity management systems intended for use in a business context, including business-to-business (B2B), business-to-government (B2G), and business-to-consumer (B2C) communications. It is available [here]. For further information regarding the upcoming meeting and the role of this paper, see report above from the International Trade Subcommittee.

Cyber News You Can Use

Google Experiences a Rough Time in Brazil  
Communications Co-chair Lois Mermelstein with Renato Opice Blum

Brazilian Google chief Fabio Jose Silva Coelho was briefly detained by local police in September over YouTube (owned by Google) videos. The user-uploaded videos suggest a mayoral candidate had committed crimes, and a regional judge had ruled that they violated local election laws and had ordered them taken down. When Google did not comply, the judge ordered Coelho’s arrest. He has since been released, and Google has blocked the videos. This is not the first time Google’s stand on free speech has put it in conflict with respect for judicial decisions around the world. (Thanks to committee member Renato Opice Blum for alerting us to this story; additional details from the BBC and Forbes.)

Privacy and Mobile Devices  
mCommerce Subcommittee Co-Chairs Richard Balough and Ted Claypoole

Smartphone users are avoiding some mobile apps because they require the user to share too much personal data, the Pew Internet & American Life Project [reported]. Pew found that 54 percent of cell phone app owners decided not to install an app when they learned how much personal information the app collects. In addition, 30 percent of the respondents reported that they uninstalled apps that were on their phones because they were collecting too much data. As to location tracking features, 19 percent turned off the feature.
Companies would be required to obtain consent from consumers before mobile device monitoring software starts collecting data under the proposed Mobile Device Privacy Act, which was recently introduced in Congress. The bill would require that before any information could be collected, the party to receive the information would need to (1) disclose that monitoring software is installed on the phone, (2) describe the types of information collected and transmitted, (3) identify the person(s) who would receive the information, and (4) explain how the information would be used.

See MIRLN for Cyberspace Updates

For up-to-date news on cyberspace law happenings, you should also visit MIRLN, a monthly newsletter edited by Cyberspace Law Committee member Vince Polley. It's free.

New Cyberlaw Publications

Internet Law for the Business Lawyer, Second Edition

This book, written by experts in the area of cyberspace law and Cyberspace Law Committee members, provides the business lawyer with a toolkit for advising clients in the electronic environment. Internet law is a new way of looking at existing law in an environment that is constantly evolving, and the shift of business to the online world has also changed the way business lawyers work with their clients. With the ease of online communications, clients may exchange much written communication about a potential transaction, or easily obtain suggested forms of legal documentation, long before a lawyer is apprised of developments.

This book is designed for the business lawyer who is not yet immersed in all of the issues that arise in internet transactions and is filled with practice tips on how to avoid traps for the unwary as well as a detailed discussion of relevant cases, statutes, and regulations. The book is divided into four sets of chapters:

- Fundamentals of Internet Transactions
- The Substantive Law of Internet Transactions
- Transaction Planning/Conducting Your Business, and
- Doing Business with Canadians.

Included is a "Top Ten" list of statutes which every lawyer should be familiar with when advising clients doing business in the electronic environment, along with chapters illustrating the legal challenges that can arise in cross-border transactions. The chapters on Canadian law are written with the U.S. lawyer in mind, and they highlight important differences between U.S and Canadian law. You can order the book here.

Protecting Your Internet Identity

When someone seeks information about you online, what do they find? How will your Internet persona affect your career and your relationships? Cyberspace Law Committee member Ted Claypoole and cybersecurity expert Theresa Payton's new book, Protecting Your Internet Identity: Are You Naked Online?, describes the growth and importance of your Internet identity and helps you manage the information about you on the Internet, so that you can shape your online persona into a positive force in your life. Written in plain language with dozens of stories, interviews, and illustrations, the book addresses other important issues like managing children's online footprints and building an Internet identity to support your business. Don't let the Internet define you - learn to take control and protect yourself. Claypoole and Payton show you how. You can purchase the book here.

Advertising and Marketing Law Casebook

Professors Eric Goldman (Santa Clara Law) and Rebecca Tushnet (Georgetown Law) had their book Advertising and Marketing Law: Cases and Materials released in July. This all-new casebook is the first casebook supporting law school courses on Advertising and Marketing Law. Although students are its primary audience, many lawyers will find the casebook to be a comprehensive, reader-friendly, and entertaining primer on the subject. You can see the table of contents here, and you can access a free sample chapter. It is also available as a DRM-free PDF for $10. If you might be interested in approaching one of your
local law schools to teach the Advertising and Marketing Law course as an adjunct instructor, please contact the authors; they would love to work with you.

### Presentations and Awards

**Serious Games - LA Chapter of the International Game Developers Association (IGDA)**

Roland Trope will be one of the speakers at the IGDA conference to be held in Los Angeles on October 18, 2012. He will speak on a panel featuring speakers addressing issues related to the development of serious games, training films, and simulations for groups including the military. Roland will speak on the subject of contractor's intellectual property rights under US Government contracts. If you are interested in attending the IGDA conference on "serious games", please contact Roland at rtrope@tropelaw.com.

**So What's Up with Electronic Contracting?**

Juliet Moringiello, Professor at Widener University School of Law, presented on her article "From Lord Coke to Internet Privacy: The Past, Present and Future of the Law of Electronic Contracting" (written with William L. Reynolds and forthcoming in the Maryland Law Review) at the Internet and Contract Colloquium at Brigham Young University Law School on September 28.

### Hearings and Interviews about Mobile Payments

Sarah Jane Hughes (University Scholar and Fellow at Maurer School of Law at Indiana University), Tom Brown (partner at Paul Hastings and adjunct professor at Boalt Hall School of Law), and Michael Katz (UC Berkeley Economics professor) were invited by the Senate Banking Committee to provide follow-up responses to additional questions raised by members of the Committee at or following the Committee's July 10, 2012 hearing on mobile payments. The Committee will collate the responses and share them via its website in the near future. Sarah Jane Hughes also was interviewed by the Daily Telegraph (London) about mobile payments and mobile wallets.

### Cloud Computing Conference

Lisa R. Lifshitz will be chairing and moderating a one-day conference entitled "Cloud Computing, A Practical Approach" for Lexpert on December 3 in Toronto. Along with experts from major cloud companies and other lawyers from Torkin Manes, she will specifically speak on key clauses in cloud computing agreements, privacy and security issues and intellectual property related to cloud. Information about this conference can be found [here](#).

### Cyberlaw Gigs

This new section of the Cyberspace Law Committee Newsletter will include job postings for or by committee members. Please send all postings to Communications Co-Directors Cheryl Balough and Lois Mermelstein by the 20th of one month for posting in the following month's newsletter.

### 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.