An entire country, Syria, turned the off switch on the Internet. Unthinkable to us, perhaps, but around the world many other nations have a vastly different view of how the government should control the free flow of communication over the global networks. Our Internet Governance Task Force is staying involved in the global discussions of how to keep the Internet free and functioning, world-wide. Meanwhile, look at the front page (if you even still look at “pages”) any day and you’ll see issues we regularly explore. Just today, here in California an identity theft ring hacked into the records of an ambulance company: those perhaps most unable to spend time on customer service calls are going to have a huge cyber-mess confronting them or their families. In addition, Internet music giant Pandora (Napster redux?) is battling to even the playing field between conventional music distribution and the Internet (or to gain advantage at the expense of artists, if you see it that way): lowering the royalty rates prescribed for Internet music distribution to bring them closer in line with satellite and cable (no Internet exceptionalism, some might chant here).

Taking our January Winter Working Meeting to Los Angeles gives an excuse to look a bit further into the convergence of Internet communications, digital distribution, and entertainment media. Our Institute on the Law of Cyberspace and Winter Working Meeting will include a CLE presentation from an LA-based practitioner and entertainment lawyer on some of the difficult issues unfolding as businesses battle over digital distribution models. And we will hear from a studio lawyer at our luncheon on some of the related issues playing out within and around the entertainment industry. We’ll also have a full slate of presentations on other cyberlaw issues, including presentations on online contracts, cybersecurity issues, criminal law and Internet counterfeiting, updates on the most recent Internet law cases and litigation tactics, legal problems in big data analytics, and more. We will also hear from one of the leading LA-based academics, Irvine School of Law founder and frequent contributor to ABA and California Bar publications, Dean Erwin Chemerinsky, on free speech and the Internet.

Scroll down for further info on the January meeting, and look for the separate link to the registration page. More information about specific events and details about the meeting will follow soon.

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

Upcoming CLCC Programs

Insuring for Data Security Threats - December 11, 2012 - Webinar and CD-ROM
Reprising a popular program offered at the 2012 ABA Annual Meeting, "Insuring for Data Security Threats: Everything a Business Lawyer Wants to Know but Is Afraid to Ask" will be offered as a webinar on December 11, 2012, at 1 pm ET. Professor Ed Morse, of Creighton University School of Law, will again moderate a panel of lawyers from law firm, technology, and insurance backgrounds to explore the data security landscape and related insurance coverage and claims.

Message from the Chair

Cyberspace Committee Winter Working Meeting - January 24-26, 2013
ABA Business Law Section Spring Meeting - April 4-6, 2013

CLCC Projects

Update from the Digital Media Subcommittee
Update from the Cybersecurity Subcommittee
Update from the Mobile Commerce Subcommittee
Opportunities to Publish

Committee Advocacy

International Internet Governance

Cyber News You Can Use

Fiduciary Access to Digital Assets
See MIRLN for Cyberspace Updates

New Cyberlaw Publications

Business Law Today Features Developments in Cyberspace Law
Geolocational Privacy

Presentations and Awards

Mobile Apps and Internet Identity
New Online Entertainment Law
management issues. The program will also be available on CD. Registration information is available here.

BLT Live: International Data Governance and Legal Issues in New Data-Related Service Models - December 18, 2012 - Webinar

In conjunction with this month’s cyberspace-related Business Law Today mini-theme (see below for details), the Business Law Section presents a free-to-members webinar with CLE credit. The program is on December 18 at 1 pm ET; register here.

Cyberspace Committee Winter Working Meeting - January 24-26, 2013

We are pleased to announce the programming for the Committee's 2013 Institute on the Law of Cyberspace and Winter Working Meeting. Registration will open very soon - check your email or the committee website for an announcement.

CLE Programming

The conference will kick off with 4+ hours of CLE presentations on a variety of cyberspace law topics. Presentations from longtime contributors to the committees and several new faces will include:

- Big Data, Beyond the Hype – John Pavolotsky, Greenberg Traurig, San Francisco
- The Sense and Nonsense of the Law of Electronic Contracts – Professor Nancy Kim, California Western School of Law
- Can’t We All Just Get Along? How Customary Practice in Licensing Rights for Film and Music Impacts their Online Digital Distribution – Louise Nemschoff, Law Office of Louise Nemschoff, Los Angeles
- Under the Radar: Emerging Cybersecurity Risks that May Have Escaped Clients' and Counsel's Notice – Roland Trope, Trope & Schramm LLP, New York; Steve Humes, Holland & Knight, New York
- The Day the Cars Stood Still: 1951 Sci-Fi or 2013 Reality? – Cheryl and Richard Balough, Balough Law Offices, LLC, Chicago
- Digital Law 2013: Hot Trends and Issues in Cloud, Mobile and Internet Law and Liability – Ian Ballon, Greenberg Traurig, Palo Alto/Santa Monica
- Strategic Remedies for Cybercrime Victims – Mark Mermelstein, Orrick, Los Angeles

New Committee Projects

Don’t miss special announcements on new and ongoing working projects of the committee. Roland Trope and Tom Smedinghoff will describe a new project involving the creation of a cybersecurity checklist. Ted Claypoole and Richard Balough will highlight an ongoing project creating a compendium of "bring your own device" policies. And Cathy Gellis will describe a new project focused on criminal enforcement of online behavior.

Luncheon Speakers

We are very pleased to announce two very special speakers who will address our group on during our Friday onsite luncheon. Dean Erwin Chemerinsky, of the UC Irvine School of Law, as well as a longtime contributor to many state bar and ABA publications, will offer some viewpoints on the changes in free speech jurisprudence and legal analysis through the growth of online communications. And offering a view from the Hollywood trenches, entertainment and technology lawyer Melinda Demsky Mehrieger, vice president of content protection at Fox, will discuss the growth of online and mobile content distribution, some of the challenges and obstacles from the studios' perspective, and what may be coming next.

Roundtables

We are repeating our exciting added format from last year, our mid-session roundtables. These are short, moderated discussions, open to all, on a variety of topics spilling out of our CLE presentations and intended to take us further into potential working group projects. This year our roundtables will focus on four areas: cybersecurity; consumer protection and online commerce; privacy and ECPRa reform; and mobile device policies and management.
Breakouts

Finally, toward the end of the first day of the conference and for the entire second day, we will break out into small working groups throughout the venue. As in the past, these working groups will be devoted to ongoing work and the projects, new and ongoing, of our committee's several subcommittees and task forces. Stay tuned for more detailed information about these projects, but please note that these meetings are open to all. For those of you returning, please help us make these breakouts as robust as possible by participating through the full second day of the meeting. For those considering attending this conference for the first time, these breakout sessions are a fantastic and thoroughly enjoyable way to get involved in the work of our committee. There is always opportunity to participate, for long-timers and newbies alike, and there are also many chances to help drum up new projects and work product for our committee.

Social Events

As in the past, we will have dinner off-site on Friday, January 25, near the hotel in the Westwood area of Los Angeles. Stay tuned for confirmation of the venue and more detailed information. There will also be an informal dinner gathering on Saturday evening, January 26. And for those arriving on Thursday, January 24, there will be a cocktail gathering at the hotel.

We look forward to seeing you in Westwood in January! Be on the lookout for the registration announcement.

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. More information about the programming and registration are available here.

Other Programs of Interest

RSA Conference - February 25 - March 1, 2013

The RSA Conference 2013 in San Francisco on February 25 - March 1 offers the theme "Security in Knowledge: Mastering Data, Securing the World." The conference will include a panel on "Do We Have the Authority? Legal Issues in Protecting Government Networks." Two of the panel's speakers are members of the Cyberspace Law Committee: Roland Trope, Partner at Trope and Schramm LLP and Adjunct Professor in the Department of Law, United States Military Academy at West Point, and John Gregory, General Counsel, Ministry of the Attorney General of Ontario, Canada.

CLCC Projects

Update from the Digital Media Subcommittee

Co-Chairs Jon Garon and Susan Stephan

At the 2013 Winter Working Meeting, the Digital Media Subcommittee plans to focus on two key areas of digital media business: (i) digital publishing and (ii) app development for media and entertainment.

Digital Publishing continues to be a rapidly evolving area. The HathiTrust digital repository, a result of the Google book digitization project, boasts 5,557,006 book titles comprising 3,695,206,550 pages of text. Litigation regarding the fair use of this resource and the ability to identify orphan works continues. So do the fair use issues involving university digitization of materials for course packets. An upcoming appeal of the sweeping 350-page district court opinion in Cambridge University Press v. Becker (a.k.a. "the Georgia State Copyright case") will potentially reshape secondary liability rules for digital excerpts. Complicating the commercial side of digital book publishing, the scheduled antitrust action against Apple and publishers MacMillan and Penguin is proceeding, while the publishing defendants Hachette Book Group, HarperCollins Publishers, and Simon & Schuster have settled identical charges. The subcommittee will explore these topics and determine what interest there might be for programs or projects related to digital publishing.
Entertainment App Development Law and Practice: There are many legal issues involved in the lifecycle of creating an app for an iPad, Android, Windows, or Blackberry device. The subcommittee will discuss the various steps and explore the potential to create programming or publications (or even our own app!) on the topic. Elements include the following:

- Underlying content rights acquisition: story, design, artwork, publicity rights, music
- Tie-in agreements (if any) to real-world goods or services
- Platform agreements: iOS, Android, Windows, Blackberry
- Privacy: Privacy by Design, COPPA, industry guidelines
- Data Security: data practices, data storage agreements, etc.
- Payment Systems: in-game purchases (particularly when looking other than at iOS)
- Terms of service for app users

The subcommittee will seek input from the mCommerce and other subcommittees possibly to develop this as a multi-year platform for addressing legal and practice needs on the mobile side of cyberspace content. Projects may include newsletter or scholarly articles, live or webinar presentations, and potentially a book, depending on interest.

Do you want to get involved or have an idea for a project? The committee is also very open to other ideas and project suggestions. Let us know by contacting Jon Garon or Susan Stephan.

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

As well as presenting CLE sessions at meetings, the subcommittee is also working on the following projects:

- A lawyer's guide to cybersecurity issues for clients considering the adoption and use of cloud computing.
- 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 with any of the projects or have any questions.

In October, subcommittee co-chairs Tom Smedinghoff and Roland Trope were officially appointed to the ABA Cybersecurity Legal Task Force, established by ABA president Laurel Bellows, and are actively participating in its efforts. One of the task force's first projects was to develop a set of five basic cybersecurity principles, which have recently been approved by the ABA Board of Governors. The ABA is urging the executive and legislative branches to consider those principles when making policy determinations for improving cybersecurity for the U.S. public and private sectors. You can read more here.

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

The Mobile Commerce Subcommittee is working on a set of documents and checklists to help practitioners protect clients in the "Bring Your Own Device to Work" movement. At the Winter Working Meeting in Los Angeles, we will revise our current documents and build a Spring Business Law Meeting presentation. If you are interested in contributing to these projects, please contact one of the co-chairs, Richard Balough or Theodore Claypoole.

Opportunities to Publish
Kristine Dorrain and Sarah Jane Hughes, Content Directors

Business Law Today regularly seeks short submissions on topics emerging for business lawyers. Pieces should be no more than 3,000 words with citations embedded in the text and not in footnotes, or supporting materials mentioned in a side bar instead of in the text. The CLC recently has contributed two full mini-theme issues to BLT (December 2011 and November 2012). Submissions are not confined to CLC mini-theme editions of BLT and are obviously much different from articles for the annual Survey of Cyberspace Law or stand-alone articles in The Business Lawyer. A strong feature of BLT is its timeliness: pieces selected
for publication normally reach readers in about 4 to 6 weeks, rather than 6 or more months. Juliet Moringiello and Michael Fleming can offer additional advice for authors interested in writing short pieces on emerging topics. If you have a topic, please cc Sarah Jane Hughes when you contact Juliet or Michael so she can keep track of everything in production for the Content Committee.

Committee Advocacy

International Internet Governance

The CLC’s Internet Governance Task Force worked with the Business Law Section in recent months to obtain “blanket authority” from the ABA and then request that the US Government take certain actions with respect to the International Telecommunication Union’s (ITU) upcoming World Conference on International Telecommunications (WCIT-12). At that conference, several ITU Member States are requesting consideration of an international treaty to regulate the Internet that may have the effect of limiting human rights on the Internet. The October 30, 2012, letter to the administration specifically requests that "the Global Internet Governance Subcommittee (GIG) of the Committee on Technology of the National Science and Technology Council (A) continue to advocate for a more inclusive, multi-stakeholder engagement as part of the WCIT-12 process, and (B) continue to advocate for the protection of fundamental human rights on a global basis as they may be affected by a range of issues related to fundamental human rights under the draft [International Telecommunications Regulations] that may be considered by ITU Member States at WCIT-12." This effort flowed from the Task Force's 2009 sponsorship of HOD Resolution 106, in which the ABA recommended to the Secretaries of State and Commerce to recommend to the UN the continuation of the Internet Governance Forum. The CLC thanks Internet Governance Task Force Chair David Satola and retired Co-Chair Hank Judy for their tremendous effort on this project. For more information, please contact David.

Cyber News You Can Use

Fiduciary Access to Digital Assets

You might recall that the CLC’s January 2012 Winter Working Meeting included a panel on fiduciary access to digital assets with panelists Jim Lamm, Damien Riehl, and Chris Kunz. Jim had submitted a proposal to the Uniform Law Commissioners (ULC) for a uniform act on giving fiduciaries (executors, administrators, conservators, etc.) access to the digital assets of a deceased or incapacitated person.

This summer, the ULC accepted the recommendation of last spring’s Study Committee to appoint a Drafting Committee to write such a uniform act (now called FADA, for short). Chris Kunz, a member of the Cyberspace Law Committee and Professor at William Mitchell College of Law, was on the Study Committee and now has been appointed to the Drafting Committee as the ABA Advisor from the Business Law Section. The ULC website describes the project as follows: "The Committee will draft a free-standing act and/or amendments to ULC acts, such as the Uniform Probate Code, the Uniform Trust Code, the Uniform Guardianship and Protective Proceedings Act, and the Uniform Power of Attorney Act, that will vest fiduciaries with at least the authority to manage and distribute digital assets, copy or delete digital assets, and access digital assets." As of this newsletter’s publication date, the Drafting Committee was scheduled to meet November 30 and December 1, in Minneapolis, and February 15-17, 2013, in a location to be announced.

The first meeting's agenda includes the following issues:

1. What is a coherent definition of digital assets, accounts, and property?
2. Which fiduciaries should be covered by this Act? Should it cover only court-appointed fiduciaries (personal representatives, conservators, and court-appointed trustees), or should it also include trustees and agents acting pursuant to a power of attorney, who are not subject to court supervision unless there is some abuse?
3. Should the fiduciary's authority with respect to digital property be part of an implicit grant of power, or should it require special authorization?
4. Should the fiduciary's authority include the ability to own, manage and distribute digital property or only to seek copies from the provider?
5. How will laws that prohibit unauthorized access to computers and computer data be affected by state law grants of authority to the fiduciary?

If you have an interest in this project or ideas about how to answer these issues, feel free to contact Professor Kunz.

Jim Lamm, Damien Riehl, and Chris Kunz are presenting another program on this topic at the prestigious Heckerling Institute on Estate Planning, in Orlando on January 17, 2013. The panel is entitled "What to Do When Your Client Is Six Feet Under but His Data Is in the Cloud." They will reprise that program, with a more technological focus, at the University of Miami Law Review Symposium on "Social Media and the Law," on February 16, 2013. This time, they will be joined by Mike McGuire, another Cyberspace Law Committee member.

See MIRLN for Cyberspace Updates

The Institute on the Law of Cyberspace and Winter Working Meeting will be full of cyber news you can use. For additional up-to-date news on cyberlaw happenings, visit MIRLN, a monthly newsletter edited by Cyberspace Law Committee member Vince Polley. It's free.

New Cyberlaw Publications

Business Law Today Features Developments in Cyberspace Law

The November issue of Business Law Today included a mini-theme on "Developments in Cyberspace Law." Committee Chair Jon Rubens wrote an introduction to the mini-theme, which included the following articles:

- "Preparing for the Proposed EU General Data Protection Regulations: With or Without Amendments" by W. Gregory Voss, professor of business law economics at Toulouse Business School
- "Demystifying Big Data" by John Pavolotsky, attorney at Greenberg Traurig
- "Property Rights in IPv4 Numbers: Recognizing a New Form of Intellectual Property" by Ernesto M. Rubi, attorney at Carey Rodriguez Greenberg & O'Keefe

If you don't remember receiving the issue via email, you can access it here.

Geolocational Privacy


Presentations and Awards

Mobile Apps and Internet Identity

Ted Claypoole, of Womble Carlyle in Charlotte NC, gave a presentation in October on "Licensing Mobile Apps" at the Licensing Executive Society international conference in Toronto, as well as a talk on "Protecting Your Internet Identity" at the Chicago-Kent College of Law.

New Online Entertainment Law Course

Jon Garon, Professor at Northern Kentucky University's Chase College of Law, will be teaching his Entertainment Law course in an asynchronous, online format for the first time. While the course is full, he is able to allow a number of lawyers to audit the course but not participate in the graded components of the course. "Space" remains limited. The fifteen-week course will begin January 16, 2013. To learn more, please contact Professor Garon, Director of the NKU Chase Law + Informatics Institute.

Cloud Computing, Privacy, and Security
Lisa R. Lifshitz, of Torkin Manes in Toronto, is chairing and speaking at a one-day seminar entitled "Cloud Computing: A Practical Approach" for LEXPERT in Toronto on December 3. She also will present on "Online Privacy and Security Issues" for the Federated Press’ 7th Annual Internet Law Course on December 11 in Toronto.

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.