Messaging from the Chair

We are gearing up for a busy Spring Meeting of the Business Law Section in Washington, D.C., April 4-6 - please see the detailed information below. Meanwhile, committee members will be organizing webinars for later in the spring, we are in the middle of several long term committee writing projects, and committee members will start to put together our annual survey of the law of cyberspace later this year. If you are looking for a project to jump into, don't hesitate to reach out directly to me, our Director of Programming Kristine Dorrain or our Director of Publications Sarah Jane Hughes, and we will gladly help link you to one of our ongoing projects.

I hope to see many of you in Washington. If you haven't yet signed up for our committee dinner on April 4, please do so today.

Jonathan T. Rubens
Chair, Cyberspace Law Committee, Business Law Section
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Upcoming CLCC Programs

ABA Business Law Section Spring Meeting - April 4-6, 2013
ABA Annual Meeting - August 8-10, 2013

Other Programs of Interest

ABA Intellectual Property Law Conference - April 3-5, 2013
The ACA Roadmap: Shared Responsibility Requirements - April 16, 2013

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The FTC and Mobile Privacy
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Need Ethics CLE Credits?
See MIRLN for Cyberspace Updates

Presentations and Publications of Interest

Regulation of Online Freedom
Cloud Computing
Cybersecurity at RSA
Cyber Intelligence

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. If you did not register in advance, you can still register on site. Here's the schedule for the Cyberspace Law Committee meetings, and CLE programs we are presenting or co-sponsoring.

Thursday, April 4, 2013

- 8am - 9am: mCommerce Subcommittee
- 8am - 10am: Program: What Your Payments Are Telling People: Privacy and the Mobile Payment Race
  This panel will review privacy compliance issues related to mobile payments. The mobile payments space is rapidly growing and payments systems are no longer limited to traditional financial services companies or providers. While large financial institutions are working to develop mobile payment products, other industries are also jumping into the mix, including Google, PayPal, etc. The industry is experiencing multiple technologies, business models and providers overlapping in this arena. Amidst the jumble of technologies, the regulatory system is rising to the challenge of ensuring that solution based privacy standards are implemented. Companies, some of which are unfamiliar with a regulated environment, will need to understand the privacy laws that apply to them. From location information to social security number protection to other personal information, this panel will explore the complexity of privacy compliance developments as applied to mobile payments providers, including FTC, GLBA, FCRA/FACTA, UDAAP, and other legal sources of privacy regulatory requirements.
- 9am - 10am: Main Cyberspace Law Committee Meeting
- 10am - 11am: Cloud Security Checklist Project
- 11am - 12pm: Cybersecurity Subcommittee
- 11am - 12pm: Cyberspace Task Force on Internet Governance
- 1pm - 2pm: Cloud & IT Services Subcommittee
- 2pm - 3pm: Consumer Protection Subcommittee
Executive Order on Cybersecurity Threats

Baby Layla

Cyberlaw Gigs

Your Articles Are Welcome

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5/30/2017

ABA Business Law Section eNewsletter: Cyberspace Law Committee

- 3pm - 4pm: International Trade Subcommittee
- 4pm - 5pm: Cyberspace Task Force on Professional Responsibility & Technology
- 7:30pm - 10:30pm: Cyberspace Law Committee Dinner - see note below

Friday, April 5, 2013:

- 8am - 10am: You Win! Or Did Your Client Just Lose?: The Law of Contests
  With the expansion of social media, clients often are unaware of how the laws that govern advertising and contests affect them. Come hear what the Federal Trade Commission has to say about false advertising, and listen as the panel of advertising and contest lawyers explores the laws that impact the holding of contests.
- 8am - 10am: You Sent Funds Where? How to Help Remittance Transfer and Mobile Payments Clients Fess Up When They Mess Up
  High-profile enforcement actions against banks are proliferating. Most involve banks’ activities on behalf of companies and governments in violation of Bank Secrecy Act and Office of Foreign Assets Control regulations or failure to keep records of transactions that might involve such violations. The same laws also apply to a wide array of providers of financial services and goods, including non-depository remittance transfer and mobile payments providers. This CLE is particularly timely because it will follow the scheduled effective date of the new CFPB remittance transfer regulations. This CLE program will review the basic requirements that apply to non-depository providers of remittance transfers and mobile payments. Presenters will discuss how to help clients identify transactions that may violate BSA and OFAC regulations and what to do once you have identified such transactions, including self-reporting to the Department of the Treasury or state authorities.
- 10am - 11am: Financial Services & Payments Subcommittee
- 10:30am - 12:30pm: Legal Ethics and the Law of Lawyering: Where We Are After Ethics 20/20 and Where We Need To Be
  A review of Ethics 20/20 accomplishments and their implications for practitioners, followed by identification of major problem areas in professional responsibility law, e.g., failure to accommodate emergency of law firms/departments or of multijurisdictional practice, lack of uniformity among states, weak choice of law provisions; concludes with a plan for action.
- 1pm - 2pm: Marketing and Advertising Subcommittee
- 2:30pm - 4:30pm: iPads at the Firewall! Should You Permit Employee Devices into Your Network?
  More companies allow or are requiring their employees to use their own laptops or smart phones as part of their employment. This bring-your-own-devices movement creates numerous legal-as well as technical-issues, which will be discussed by the panel. Chaired by mCommerce Subcommittee chairs Ted Claypool and Richard Balough.
- 4:30pm - 5:30pm: Cyberspace Committee Meeting of Subcommittee and Task Force Chairs

Saturday, April 6, 2013:

- 10:30am - 12:30pm: Program: Licensed Today, Infringement Tomorrow? The Termination Right Under the Copyright Act and Other Oddities
  There are many special considerations when licensing copyrighted works (including software), but did you know that copyright owners have the right to terminate copyright assignments and licenses? This program will explore the termination right under U.S. copyright law and other issues related to copyright (and by extension, other IP) licenses.
- 2:30pm - 4:30pm: Program: The Alphabet Soup of Electronic Transfers of Funds
  Experts on each of the large automated payment systems will discuss how they work, the role they play in the payments system and the rules under which they operate. The panel will then discuss recent developments on how courts interpret the adequacy of security procedures to allocate fraud losses under evolving technology standards and regulatory guidelines.
Cyberspace Law Committee Dinner

We hope that you will join us at the Cyberspace Law Committee Dinner, which will be held at DC Coast on Thursday, April 4, 2013, at 7:30 p.m. The event has been generously sponsored by Box. It's the perfect setting to unwind and catch up with friends. You must be registered for the Spring Meeting to attend this event. The deadline for reservations was March 22, but let us know if you are still looking for a ticket to the dinner. There might be an opportunity to buy one on site (no promises).

ABA Annual Meeting - August 8-10, 2013

Even though Spring Meeting is still a few days away, it is time to start thinking about possible submissions for Annual Meeting programming. We probably have only one guaranteed slot, but there is room for a really solid discretionary slot. Also think about leveraging your connections with other subcommittees, or even committees, to take one of "their" spots, with us as a co-sponsor! In addition, each subcommittee has the opportunity to provide non-CLE programming at its subcommittee meeting at Annual, so even if a CLE spot isn't available, consider making your subcommittee meeting substantively meaningful. Please submit proposals, including Program Title, Program Description (including intended audience), Program Chair [name/phone/email], and possible cosponsoring committees or subcommittees, to Kristine Dorrain. We don't have a deadline yet, but "early" submissions are encouraged.

Other Programs of Interest

ABA Intellectual Property Law Conference - April 3-5, 2013

The ABA's 28th Annual Intellectual Property Law Conference, April 3-5, 2013 in Arlington, Virginia offers a wide variety of intellectual property programming, including a workshop titled: "Trademark & Copyright: Dear Congress, Do No Harm to the Internet: An Update on Anti-Piracy and AntiCounterfeiting Legislative Efforts." More details are here.

The ACA Roadmap: Shared Responsibility Requirements - April 16, 2013

Date: April 16, 2013 Location: N/A Format: Webinar/Teleconference

CLCC Publications

Cyberspace Law Survey

The Committee is looking for authors to survey relevant developments for its annual Survey of the Law of Cyberspace in The Business Lawyer, published by the ABA Business Law Section. The annual survey is a great way to contribute to the work of the Committee as well as to showcase your expertise. The Business Lawyer is the premier business law journal in the country, circulating to more than 60,000 readers. Even if you do not attend many in-person meetings, you can still volunteer to write.

The Survey format involves short articles - typically no more than 12 double-spaced pages - covering important case law, legislation, and administrative rulings. We encourage single-author pieces rather than collective works. Authors must be attorneys. Student authorship is not allowed, though credit may be given for those who assist you. Law review format is required. (Dust off your Bluebook - footnotes and pinpoint citations are essential!)

We will edit your piece and peer review functions will be performed by experienced members of the Committee to ensure a high caliber product. Of course, the usual caveats apply: we can't promise the ABA will accept any submission, but we will work hard to help yours be accepted. We also can't promise you will be invited to write on your first choice topic.

New and returning authors are welcome. A list of potential topics can be found on the Committee's website. Feel free to propose other relevant topics that might be promising. However, please note that the Survey focuses on important developments: a topic must have sufficient case law, legislation, or administrative developments to justify inclusion. If you are interested, please contact Kristine Dorrain.
Dorrain or Ed Morse. We are looking for firm commitments by April 1 as the deadlines for submission will begin in May. (Even those who may have indicated interest at the Winter Working Meeting should please email Kristine or Ed so that we can have a complete and accurate list of volunteers).

CLCC Projects

Corporate Directors Tool Kit
Sarah Jane Hughes, University Scholar and Fellow at Maurer School of Law, Indiana University

The committee is joining the contributors to the Corporate Directors Tool Kit project, which produces a book that is now in its 7th edition. The general editors have asked us to identify contributors for four key areas, and possibly a fifth. They are (1) data privacy - particularly outside the US; (2) cybersecurity - particularly after the SEC’s Corp. Fin. Division 2011 “guidance” on disclosures; (3) technology licensing; and (4) safe selling online. The fifth topic under consideration includes compliance with regulations enforced by OFAC, FinCEN, and the IRS on anti-money laundering, anti-terrorism, and limitations on transactions with designated states or individuals on federal watch lists.

Drafts will be due to the general editors on July 1, 2013, which means slightly earlier to committee leadership. More than one contributor is likely to be needed for the four primary topics listed above, and we can use reviewers as well. If you are interested and have not already identified your interest, please alert Sarah Jane Hughes and she will send you an invitation to the Box.com area we are creating for this project.

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

As a follow-up to the subcommittee’s meetings at the Los Angeles WWM, and given the timing of developments on which the subcommittee could have input, four conference calls were held in February and a fifth was set for the second week in March.

The first calls addressed drafting and substantive issues involving the UNCITRAL Electronic Communications convention and how it should be presented for ratification. Future calls on that will focus on the draft implementing legislation and the relationship to the Federal E-Sign Act and UETA. The subcommittee then addressed a draft report on the new project at UNCITRAL to be tabled soon on ETR (electronic transferable records). This has been one of the grails since early e-commerce days, with only limited progress made on it, especially when dealing with cross-border commerce. Once the report is finalized and issued in the six UN languages, we will again focus on it to provide more input before the 40-country group meets in NYC in May.

The March call focused on new proposals at the UN Economic Commission for Europe’s CEFACT body dealing with recurring issues involving cross-border “interoperability” of e-signed data or documents, how far technology neutrality can go, etc. That proposal implicates other projects at CEFACT (which operates as a wide-membership body, not limited to EU zone countries) on which the subcommittee’s views will be asked for as well.

All this has put off for hopefully later this spring a return to developments on bilateral or multilateral single window systems for e-commerce and import-export activity, as well as online dispute resolution for low value cross-border e-transactions. The subcommittee also plans to monitor e-commerce developments at the ITU (International Telecommunications Union) and a number of other bodies such as ISO and various regional bodies, including ASEAN, APEC, OAS and SADC.

Interested Cyberspace members can get more info or participate by contacting either co-chair, Hal Burman or John Gregory, whose contact information is found on the subcommittee webpage.

Update from the Cybersecurity Subcommittee
Co-Chairs Roland Trope and Tom Smedinghoff
At the Spring Meeting, the Cybersecurity Subcommittee will have a working session on its project to develop a guide for counsel to respond to a client's receipt of federal cyber intel reports pursuant to the recent Executive Order and PDD 21. If you are interested in working on this project but cannot attend the Spring Meeting, please send your name and contact information to Roland Trope.

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

The chief of the Mobile Technology Unit for the Federal Trade Commission's Bureau of Consumer Protection will offer her insights at the Mobile Commerce Subcommittee meeting during the Spring Meeting in Washington, D.C. Patricia Poss leads the Bureau's law enforcement and policy work related to mobile technology. She was one of the drafters of the FTC's recent staff report "Mobile Apps for Kids: Current Privacy Disclosures are Disappointing." Ms. Poss served five years as counsel to the Director of the Bureau and previously spent several years investigating and litigating consumer protection cases that challenged internet fraud including phishing and spam. The Mobile Commerce subcommittee's meeting is at 8 a.m. on April 4. If you have any questions about the subcommittee meeting or activities, please contact one of the co-chairs, Ted Claypoole or Richard Balough.

**Marketing & Advertising Subcommittee Update**
*Co-Chairs Erik Pelton and Peter McLaughlin*

At the Marketing & Advertising Subcommittee's will meet during the ABA Business Law Section Spring Meeting on April 5th at 1 pm. We will discuss recent FTC amendments to COPPA and rules around mobile apps. The discussion will also cover the next steps (Trademark Clearinghouse) in the gTLD process for brand owners and social media intellectual property developments. Join the discussion and learn about evolving rules applicable to your clients.

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**Cyber News You Can Use**

**The FTC and Mobile Privacy**
*Richard Balough and Theodore Claypoole, Co-Chairs of the mCommerce Subcommittee*

In a new report, the Federal Trade Commission (FTC) urged mobile app developers to disclose in easy-to-understand language what data they collect and how the data is used. In addition, the FTC said mobile app developers should consider a do-not-track mechanism. The report, "Mobile Privacy Disclosures: Building Trust Through Transparency," noted that more than any other technologies, mobile devices are typically personal to the use, almost always on, and with the user. As a result, the devices collect unprecedented amounts of data, which can reveal sensitive information about the individual.

The FTC found that mobile devices made by HTC America, Inc., contain serious security flaws, which allow the phones to send their own text messages, send personally identifiable information to third parties, and even activate the microphone to listen to conversations. As part of a consent decree, HTC agreed to issue patches for the security lapses, to establish a comprehensive program to address security risks, and to notify customers about the security vulnerabilities. [*In the Matter of HTC America, Inc., FTC File No. 122 3049*].

**The Twitter Predictor**
*Sarah Jane Hughes, Cyberspace Law Committee Director of Publications*

Indiana University (IU) associate professor Johan Bollen has received a patent for an invention that the media have dubbed "The Twitter Predictor." Formally titled "Predicting Economic Trends via Network Communication Mood Tracking," the system analyzes hundreds of millions of tweets each day and "can detect subtle changes in public conditions that are correlated to specific entities like the Dow Jones and various other financial and economic indicators," according to the university. For more information on this unique system, see the IU news release.

**Business Lawyers on Facebook**
Did you know that the ABA posts photos of its Section leaders and events on the Business Law Section Facebook page? Check it out at http://www.facebook.com/ABABusinessLaw.

Need Ethics CLE Credits?

The Professional Responsibility Committee is sponsoring a program at the Spring Meeting entitled "Legal Ethics and the Law of Lawyering: Where We Are After Ethics 20/20 and Where We Need To Be." The Cyberspace Law Committee is co-sponsoring this two-hour program. See Spring Meeting schedule above.

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.

Presentations and Publications of Interest

Regulation of Online Freedom

On February 28, David Satola, Lead Counsel for Finance, Private Sector Development & Infrastructure at the World Bank and Chair of our Internet Governance Task Force, gave a lecture at Creighton University School of Law in Omaha, Nebraska. The lecture, entitled "Regulation of Online Freedom: International Internet Governance and Human Rights" addressed the potential threats to human rights from an increased state-centric approach to internet regulation. A video link to the lecture is accessible here. Ed Morse, Co-Chair of our Electronic Financial Services Subcommittee, was pleased to host David.

Cloud Computing

On February 21, Lisa R. Lifshitz spoke on "How to Avoid Losing Control of the 'Message': Managing User-Generated Content Risks" at the Federated Press' 4th Social Media Risks Course in Toronto. Lisa's article on recent Canadian "Privacy Requirements in the Era of Cloud Computing" was recently published by the Ontario Bar Association's Business Law Section's "Business Beat" Newsletter.

Cybersecurity at RSA

At the recent RSA Conference in San Francisco, three of our active committee members gave presentations. Tom Smedinghoff, of Edwards Wildman and Co-Chair of our Cybersecurity Subcommittee, was a featured speaker on two panels. His panels' topics were "Data Breach Law Update - Global Trends, Legal Complexities" and "Trust Frameworks: Alternative Approaches to Achieve the Panacea."

John Gregory, General Counsel at the Ministry of the Attorney General (Ontario, CA) and Co-Chair of our International Trade Subcommittee, and Roland Trope, of Trope and Schramm and Co-Chair of our Cybersecurity Subcommittee, also appeared together on a panel. They discussed "Do We Have the Authority? Legal Issues in Protecting Government Networks."

At the Sci-Tech's ISC Meeting the preceding weekend, Roland Trope gave a presentation on the Executive Order on Cybersecurity and the case law and regulatory developments that preceded it and that may influence its implementation.

Cyber Intelligence

IEEE Security & Privacy will publish in its March/April issue an article by Roland Trope and Stephen Humes, of Holland & Knight, entitled "By Executive Order: Cyber Intelligence Imparts Cyber Responsibilities."

Executive Order on Cybersecurity Threats

Sarah Jane Hughes, University Scholar and Fellow at Maurer School of Law, Indiana University, and Roland Trope (who seems to be everywhere lately) were quoted in a recent Compliance Week article entitled "Executive Order Could Warrant Cyber-Security Response."
Baby Layla

Kristine Dorrain, of the National Arbitration Forum and our Director of Programming, recently gave birth to Layla Ann. Mom, baby, and the rest of the family are doing well.

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 Articles Are Welcome

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.