Cyberspace Law Committee

July 2013

Message from the Chair

The ABA Annual Meeting is only a few weeks away! As Chair of the Cyberspace Law Committee, I encourage you to attend the many exciting programs and meetings we have planned in San Francisco on August 9-11.

If you haven't done so already, please make your travel plans now. If you are unable to physically be there, you will be able to join in by conference telephone. There are, and will continue to be, many opportunities for you to participate in our Committee. Check the Business Law Section website for other events of interest.

Here are some upcoming highlights of the Annual Meeting:

Friday August 9

9 am - 12 noon Committee Meeting: Supersession plus Presentations
Fairmont Hotel, Garden Room, Lobby Level

**REMEMBER: You can attend this meeting without purchasing the all-access pass or any CLE ticket; you only need the "Registration and Access to Non-CLE Programs" ticket

Join us for updates on committee projects plus an array of timely cyberlaw substantive presentations:

1. Bitcoins: Are they the "Next Great Step in E-Commerce" or just a gimmick?
2. Mobile payments and the power of the mobile platform: latest developments in the ever more complex world of mobile payments and applicable law
3. The House Judiciary Comprehensive Review of Copyright Law
4. Criminal law: balancing victims’ rights and civil liberties in the Internet era
5. Top 10 Internet Law developments of the year . . . so far

The substantive presentations will begin at approximately 9:50 a.m.

8:30 - 10 am Program: Internet Governance: What It Is, Where It’s Going, and What It Means for Your Clients
Moscone Center West, Room 3008, 3rd floor - Co-chaired by our Internet Governance Task Force Chair David Satola and the International Law Section

While this program unfortunately overlaps with the first part of our committee meeting, some of you may be able to jump from one to the other. See the Update from the Internet Governance Task Force below for more information on this program.

2:30 - 4:30 pm Program: IP for Non-IP Attorneys: Highlights from the IP Deskbook for Business Lawyers
InterContinental Mark Hopkins, California, Street Level (co-sponsoring)

The Cyberspace Committee is co-sponsoring this program, coordinated with the publication of the third edition of the Section's IP Deskbook, to which several Cyberspace Committee lawyers have contributed.

4:30 - 6:00 pm Authors’ Reception
InterContinental Mark Hopkins - George D. Smith Room, Mezzanine Level

The Section’s Publications Board is hosting a reception to celebrate the publication of the new book RFIDs, Near-Field Communications, and Mobile...
Payments. Kudos to editors Sarah Jane Hughes, Steve Middlebrook, and Candace M. Jones and the many contributors to the book from the CLC for bringing this much-anticipated title to completion. We expect a lot of interest in the book. The reception will also celebrate the publication of the third edition of the Section's Intellectual Property Deskbook for the Business Lawyer, edited by the Section's IP Committee Chair, Sharon Sandeen, and to which many committee members, including yours truly, contributed chapters.

7 - 11 pm Cyberspace Law Committee Dinner - with Corporate Counsel, IP, and Corporate Compliance Committees

Tres Restaurant, 130 Townsend Street in San Francisco's SoMa neighborhood

Tres, a "tequila lounge and Mexican kitchen," helps its guests discover the wonders of Jalisco, Mexico - from its food to its music to the amazing products of the agave plant. Come for a terrific margarita and great food too. If you have already registered for Annual Meeting, just revisit the meeting home page, click on "Already Registered," and enter your email address and badge number. You can then purchase your dinner ticket. If you haven't yet registered for the meeting, please do so soon and sign up for the dinner at the same time.

Saturday, August 10

8 - 9 am Meeting of Subcommittee and Working Group Chairs and Administrative Subcommittees (spot held for any group that wants to meet)
Fairmont Hotel, International Room, Mezzanine Level

8 - 10 am Program: I Will Swipe No More Forever: RFID, NFC and Mobile Payments
Fairmont Hotel, French Room, Lobby Level - Chaired by Steve Middlebrook

10:30 am - 12:30 pm Program: Security and the Cloud: Key Tips to Managing Your Risks in Cloud Computing Agreements
Fairmont Hotel, French Room, Lobby Level - Co-chaired by Lisa Lifshitz and Ariane Siegel

2:30 - 4:30 pm Program: Big Data - How Payment Transaction Information Is Being Commoditized and How to Approach the Related Issues
Fairmont Hotel, Terrace Room, Terrace Level (co-sponsoring)

I look forward to seeing you in San Francisco!

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

Upcoming CLCC Programs

ABA Annual Meeting ☀ August 8-10, 2013
Kristine Dorrain, Programming Director

Please remember to book your travel to the ABA's Annual Meeting in San Francisco, August 8-13, 2013. As usual, we worked hard to make sure all official Cyberspace events are on Friday and Saturday, August 9-10. See Jon's letter above for more details. The Business Law Section Headquarters is the Fairmont Hotel. I expect it will sell out, so book your room quickly! To register and book your room, visit the Annual Meeting website.

If you have any questions in advance of the meeting, please reach out to Kristine Dorrain or any member of the Committee's leadership.

Cyberspace Law Institute and Winter Working Meeting ☀ January 31 - February 1, 2014
The 2014 Cyberspace Law Institute and Winter Working Meeting will be held at the Four Seasons Hotel in downtown Denver, where we secured a great deal. The hotel has very appealing and comfortable meeting space and is in an excellent location near the LoDo area of downtown Denver, an easy drive or cab or shuttle ride from the Denver airport, which has a strong track record of remaining open through the winter. Denver is also reachable from either coast in 3-4 hours! We are currently organizing our planning team for January 2014, and we are actively recruiting two or three additions to this committee. Our initial work involves lining up additional sponsors for next year's meeting, but we are also starting to work on content. Please let the chair or any of the committee leaders know if you can assist. Registration is not yet available, but do bookmark the meeting website.

Other Programs of Interest

What Small Inventors Need to Know about the America Invents Act

July 11, 2013
Location: N/A
Format: Webinar/Teleconference

Supreme Court Round-Up

July 16, 2013
Location: N/A
Format: Webinar/Teleconference

CLCC Publications

RFIDs, Near-Field Communications, and Mobile Payments to Launch
Sarah Jane Hughes, Publications Director

RFIDs, Near-Field Communications, and Mobile Payments will be in print for the Annual Meeting. I am delighted with the quality and variety it contains. Jon Rubens’ letter mentions the joint book launch on Friday, August 9, at Annual. Congratulations to my co-editors Stephen T. Middlebrook and Candance M. Jones, the many members of the CLC who contributed chapters or otherwise (such as Michael Fleming’s forward! to this book, and the original members of the RFID Task Force who launched this project, including original Task Force co-Chair Ben Beard. Many thanks to Lisa Lifshitz, who recruited David Flint from Macrobets in Glasgow and Sajai Singh from Bangalore and who also produced her own excellent chapter. Special thanks to Michael and Jon for encouraging the project and to those of you who reviewed chapters at the authors’ or my request. Like the second edition of Internet Law for the Business Lawyer (2012), this book may need a second edition because many of the authors are already aware of even newer developments, particularly in Canada and the EU.

CLCC Projects

Are You Interested in Becoming a Committee Director?

As a substantive committee of the Business Law Section, the Cyberspace Law Committee appoints directors - a type of liaison - to each of the several non-substantive committees of the Section. These include committees on content, diversity, technology, membership, pro bono, international coordination, programs, publications, and educational programming. We are currently looking for directors to serve as liaisons to several on these committees - which involves attending the meetings of those committees at Spring and Annual Meetings and reporting back to our Committee on developments. This is a great way to participate in Committee leadership and to get to know how the BLS works. If you are interested in contributing in this way, please contact Committee Chair Jon Rubens.

Internet Governance Task Force Update
Chair David Satola
The Internet Governance Task Force is co-sponsoring with the ABA's International Law Section a program on "Internet Governance: What It Is and Where It Might Be Going" at the ABA Annual Meeting on Friday, August 9. Originally conceived as a new world without borders and governmental constraints, the Internet has become one of the most politicized and dramatically influential elements of daily life around the world. This program serves as both an introduction and update to the current state of play in the emerging area of Internet Governance, and panelists will discuss current issues that affect legal practitioners and their relation to the Rule of Law generally. The program will discuss the various groups within the international community involved in Internet Governance, the differences of opinion that have consistently arisen, and policy positions that the ABA has taken with respect to the direction and tenor of international debates on Internet Governance. In addition, the panelists will discuss how lawyers can explain Internet Governance to their clients and how Internet Governance impacts business decisions made by firms as they expand their global reach, particularly with respect to developing strategies to address privacy issues and conduct effective and legal e-commerce activities globally.

Update from the Digital Media Subcommittee
Co-Chairs Jon Garon and Susan Stephan

At the ABA Annual Meeting the Digital Media Subcommittee will kick off the committee's assessment of the House Judiciary Committee Comprehensive Review of Copyright led by Chairman Bob Goodlatte. The subcommittee will solicit ideas and topics on how best to engage the copyright review process to promote the creative industries and technology companies involved in cyberspace commerce. We encourage articles, webinars, and presentations on the related topics. Among the possible topics are the legislative response to Kirtsaeng v. John Wiley & Sons, Inc. and international first sale application; modification of the notice and takedown regime under the DMCA; a digital resale right enabling Forward/Delete technology; rules related to the scope of licensing rights; Google Books and online libraries; fair use for digital collections and much more. The subcommittee anticipates the short discussion at the annual meeting will lead to a working group for the Winter Working Meeting in January. If you already know you are interested in this topic, please let Jon Garon know so he can include you in our plan.

Update from the Professional Responsibility and Technology Task Force
Co-Chairs Juliet Moringiello and Lois Mermelestein

Members of the Cyberspace Committee may be interested in subscribing to The Ethical Business Lawyer, the newsletter of the ABA Business Law Section's Professional Responsibility Committee. The newsletter often contains items of interest to those who would like to learn more about the ethical issues raised by the use of technology by lawyers and judges. If you would like to be added to the e-mail list for The Ethical Business Lawyer, please send an e-mail message to Juliet Moringiello at jmmoringiello@widener.edu.

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

The mCommerce subcommittee is working to complete by fall materials that can assist attorneys in preparing Bring Your Own Device (BYOD) policies and procedures for their clients. The materials will include an outline of questions that employers should answer in order to gain a full understanding of the practical and legal issues concerning the use by employees of their own smart devices, tablets, and laptops at the office or to access the employer's network and data. If you would like to assist in this effort, please contact the co-chairs of the mCommerce subcommittee, Ted Claypoole or Richard Balough.

Get Involved with a Subcommittee

Currently the Cyberspace Law Committee has 10 subcommittees and task forces. They are: Cybersecurity, Digital Media, Online Advertising and Marketing, International Trade, Consumer Protection, Cloud & IT Services, mCommerce, Financial Services and Mobile Payments, Internet Governance (task force), and Professional Responsibility and Technology (task force). Each subcommittee or task force is led by two co-chairs, who are responsible for leading subcommittee meetings at the BLS Spring Meeting, preparing programs for presentation at meetings or as webinars, and developing topics for expansion into written product. Subcommittee and task force chairs also contribute to the Committee's
monthly newsletter and report to members on developments in their subject areas. If you would like to get involved with a subcommittee or task force, please contact the co-chairs (whose names/emails appear above and/or on the Committee website) or Committee Chair, Jon Rubens.

### Cyber News You Can Use

#### Call for Papers on Cybersecurity

*The Northern Kentucky Law Review* and Salmon P. Chase College of Law seek submissions for the third annual Law + Informatics Symposium on February 27-28, 2014. The focus of the conference is to provide an interdisciplinary review of issues involving business and industry responses to cyber threats from foreign governments, terrorists, and corporate espionage. The symposium will emphasize the role of the NIST Cybersecurity Framework and industries providing critical infrastructure. The submission deadline for abstracts is September 1, 2013. Details are available [here](http://www.abanet.org).  

#### Defense Department Effort Securing Software-Defined Networks

*Sarah Jane Hughes, University Scholar and Fellow at Maurer School of Law, Indiana University*

The Department of Defense has awarded $910,000 to a team of computer security experts at Indiana University to study critical issues and vulnerabilities associated with software-defined networking, the next-generation open software interface for controlling the forwarding behavior of networks. Google and Facebook are just two companies using software-defined networks, in this case the network protocol OpenFlow. IU's lab InCNTRE, the largest test bed for software-defined networking in the world, studies how well OpenFlow products and the software-defined networking products from different vendors work together. For more information about this lab or the recent grant, see IU's [news release](http://www.indiana.edu).  

#### 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.  

#### 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](http://www.facebook.com/ABABusinessLaw).

### Presentations and Publications of Interest

#### New *Business Law Today* Leadership

Cyberspace Law Committee member Warren E. Agin was appointed co-chair of *Business Law Today* for a three-year term starting with the 2013 Annual Meeting.

#### Fundamentals of Data Security Law

Business transactions and data security lawyer Kathleen M. Porter spoke at the Massachusetts Continuing Legal Education (MCLE) program “Fundamentals of Data Security Law” on June 20, 2013. Ms. Porter discussed the Massachusetts data breach notification law (M.G.L. c. 93H) and security regulation (201 CMR 17.00), as well as security issues with mobile devices in the workplace. In addition to Ms. Porter, the panel included Shannon Choy-Seymour, Office of the Attorney General, Commonwealth of Massachusetts; Mary-Pat Cormier, Bowditch & Dewey, LLP; and program chair C. Max Perlman, Hirsch Roberts Weinstein LLP. The program was offered both live and via Internet to attendees.

#### When Are Electronic Records Received?

One of Prof. Christina Kunz's students, Jevon Bindman, has published the article "The Spam Filter Ate My E-Mail: When Are Electronic Records Received?" in the *William Mitchell Law Review* (39 Wm. Mitchell L. Rev. 1295 (2013)). For the
article, Mr. Bindman interviewed Prof. Kunz, Ben Beard, Michael Fleming, Michael McGuire, Tom Smedinghoff, and David Whitaker—all present or past members of the Cyberspace Law Committee. The article fills a gap in the literature about whether a record that is stopped by a spam filter has been “received” under various rules of law. The Cyberspace Law Committee has presented programs on the subject.

Electronic Contracts

Prof. Nancy Kim recently had published *Wrap Contracts: Foundations and Ramifications* (Oxford University Press), in which she explains why clickwraps, browzewraps and shrinkwraps were created, how they have developed, and what this means for society. Prof. Kim's central thesis is that how a contract is presented affects and reveals the intent of the parties. She proposes doctrinal solutions—such as the duty to draft reasonably, specific assent, and a reconceptualization of unconscionability—which fairly balance the burden of wrap contracts between businesses and consumers. You can find more information about the book at amazon.com, bn.com, or your local bookstore. You can also order it through the publisher and use promo code 31998 to save 20%.

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.