Message from the Chair

Annual Meeting De-Brief

The Cyberspace Committee presented a full slate of up-to-date cyberlaw programming at the ABA Annual Meeting in San Francisco in August. Thanks to all who helped put this strong content together, thanks to all our presenters, and thanks to those of you who turned out for these programs.

The Committee put on two well-received CLE programs. The first, "I Will Swipe No More Forever: RFID, NFC and Contactless and Mobile Payments," was organized and moderated by Financial Services & Payments Subcommittee Co-Chair Steve Middlebrook. A top-notch panel of in-house counsel from payment companies, a Federal Reserve lawyer, and private sector payment law specialists brought us current on the use of near-field technologies and contactless payments in a variety of settings. They laid out some of the difficult questions raised by application of the remittance, money transfer, privacy, and other laws to the expanding uses of these technologies.

Next, Lisa Lifschitz organized and moderated "Security and the Cloud: Key Tips to Managing Your Risks in Cloud Computing Agreements." A panel of IT and privacy law experts all chimed in on the still-unfolding uncertainties of how to negotiate and obtain security in cloud provider agreements.

The Committee also co-sponsored a program with the IP Committee in connection with the publication of the new IP Deskbook for the Business Lawyer, 3rd Edition; a program with the Young Lawyer Committee entitled "Things My Ethics Professor Didn't Tell Me: Top Ethical Pitfalls for the Social Media Age"; a program with the International Law Section on Internet Governance; and a program with the Consumer Financial Services Committee entitled "Big Data - How Payment Transaction Information is Being Commoditized and How to Approach the Related Issues."

Look for the materials from all these programs on the Business Law Section website.

For the next few months, stay tuned for announcements of committee webinars, a special cyberlaw mini-issue of the Section's e-magazine Business Law Today, and the 2013 Survey of the Law of Cyberspace, to be published in The Business Lawyer toward the end of the year.

Institute on Cyberspace Law and Winter Working Meeting - 2014

Also - make plans to attend the Committee's Institute on the Law of Cyberspace and Winter Working Meeting - which will be at the Four Seasons Hotel in Denver, Colorado, January 30 - February 1, 2014. For the 2014 Institute and WWM you can expect 4-5 hours of CLE programming, with up to 8 separate presentations on current cyberspace law topics, including a depth of focus and emphasis on the latest legal implications of tech development. We will also host a series of roundtables on cyberlaw issues, followed by breakout sessions over the remaining day and a half, devoted to work on committee projects.

I look forward to seeing you in Denver!

Jonathan T. Rubens
Chair, Cyberspace Law Committee, Business Law Section
Jon@irlegalgroup.com
Upcoming CLCC Programs

Institute on the Law of Cyberspace and Winter Working Meeting, January 30 ♦ February 1, 2014

Kristine Dorrain, Programming Director

Winter Working Meeting planning is now underway. We are excited to bring you the 2014 Institute on the Law of Cyberspace and Winter Working Meeting to be held in Denver at the Four Seasons Hotel. We will again be including a 1/2 day CLE opportunity to kick off our WWM. Please plan to attend ALL DAY on both January 31 and February 1 as the days will be packed with CLE, discussions, and work time, as well as chances to mingle and network. Registration will open in October, and you can access it through the Institute/WWM webpage.

We are looking for interested folks to submit CLE and/or roundtable proposals. Here are a few particulars:

1. CLE sessions will be 20, 30, or 40 minutes long; this means no more than 1-2 presenters per program. Ideally, we are looking for single-presenter programs.
2. This is really CLE, so original written materials, etc. will be required. The deadline for materials is tentatively December 1, 2013. Scholarly papers are welcomed, but not necessary; detailed PowerPoints are accepted.
3. The audience will be pretty acquainted with the basic knowledge; so in-depth, concentrated (geeky) sessions are welcomed. We are interested in high-level, new, and cutting-edge cyberlaw topics.
4. If you're new to the committee, this is a great way for us to get to know you and your expertise!
5. Roundtable moderators will not prepare CLE materials but will prepare a discussion outline and will be responsible for keeping the group discussion on topic; moderators should not plan to be "presenters" so much as "facilitators."

If you have a more "mainstream" topic, that's great. Submit it too. We are also looking for proposals for Spring Meeting (2-hour CLE).

We will offer "roundtable" discussions again this year at the WWM, with a concerted effort to tie each roundtable to an established or planned work product. The roundtables will be a great chance to review new cases, unresolved issues, and emerging theories with a small but interested group.

We will then segue from the discussion portion (roundtable) to the working portion (breakouts) of the meeting, where we return to the actual work of the committee. Roundtables are typically an hour or longer.

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.

Please submit WWM CLE proposals to me by September 21, 2013. What I need is:

- Tentative title
- Paragraph description (consider the ½ hour time frame when defining scope)
- Why this is cutting edge

If you have an idea for a Roundtable, please submit your proposal by September 21, 2013. What I need is:

- Project description
- Indicate if it's a current or proposed project

http://apps.americanbar.org/buslaw/committees/CL320000pub/newsletter/201309/
Also, we are looking for corporate sponsors to help keep the registration costs and dinner ticket prices low. Contact Kristine Dorrain for more information on sponsorship amounts and benefits or with any questions about the WWM.

Other Programs of Interest

**Trademark Fundamentals: Managing Your IP in a World of Social Media**
September 12, 2013
Location: N/A
Format: Webinar/Teleconference

**The Cyber Insurance Market and Risk Allocation Solutions for Security Risks in Cyberspace**
September 24, 2013
Location: N/A
Format: Webinar/Teleconference

**Fair Use and Copyright Clearance for Creative Clients: A Review of Recent Case Law and Practice Tips**
September 24, 2013
Location: N/A
Format: Webinar/Teleconference

**NKU Security Symposium**
October 18, 2013
The 2013 Northern Kentucky University Security Symposium is a one-day event, October 18, 2013, which focuses on information security challenges, best practices, and professional discussions. This annual symposium is hosted by the NKU Center for Applied Informatics and brings together information security professionals and others interested in the topic for relevant and informative presentations and discussions on current security issues. The NKU Chase Law + Informatics Institute will offer a track on "Legal Issues in Privacy and Security," focusing on legal aspects of eDiscovery, HIPAA, mobile devices, social media, and related topics. The program and CLE are free to the public, but registration is strongly encouraged and seating is limited.

**CLCC Publications**

**RFIDs, Near-Field Communications, and Mobile Payments Launches**
*Sarah Jane Hughes, Publications Director*

*RFIDs, Near-Field Communications, and Mobile Payments,* the committee's new book, was launched at the Annual Meeting on Friday, August 9. Many thanks to Sarah Jane Hughes, Cyberspace Committee Publications Director and editor, along with co-editors Stephen T. Middlebrook and Candace M. Jones. Two dozen members of the CLC contributed chapters or other sections to this book. Special thanks to Michael Fleming and Jon Rubens for encouraging the project and to those of you who reviewed chapters. 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. You can purchase a copy of the book through the ABA website.

**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.

Planning Committee for Winter Working Meeting

It's not too late to join the planning committee for the Winter Working Meeting. We are looking for Colorado-based members to join the committee to help with logistics for the meeting, to reach out to the Denver-Boulder academic community, to identify members of the local law and technology business community who might join us at the meeting, and to identify and lock in corporate and law firm sponsors for the meeting. Please let Jon Rubens or Kristine Dorrain know if you are interested.

Cybersecurity Subcommittee
Co-Chairs Tom Smelinghoff and Roland Trope

   At the Annual Meeting, the ABA released a new book titled The ABA Cybersecurity Handbook: A Resource for Attorneys, Law Firms, and Business Professionals. This book was written by members of the ABA Cybersecurity Legal Task Force established by ABA President Laurel Bellows. Subcommittee co-chairs Roland Trope and Tom Smelinghoff, who represent the Business Law Section on the Task Force, contributed major sections to the book. It is available through the ABA website.

2. Annual Meeting CLE Programs.
   Lisa Lifshitz and Ariane Siegel, who lead the Subcommittee's Cloud Security Project, co-chaired and Lisa moderated "Security and the Cloud; Key Tips to Managing Your Risks in Cloud Computing Agreements". Program materials are available here.

3. ABA Cybersecurity Resolution.
   The Business Law Section co-sponsored ABA Resolution 118 proposed by the Cybersecurity Legal Task Force and adopted by the ABA House of Delegates at the 2013 Annual Meeting in San Francisco. This Resolution condemns intrusions into the computer systems and networks utilized by lawyers and law firms. It also urges lawyers and law firms to review and comply with the provisions relating to the safeguarding of confidential client information and keeping clients reasonably informed, which are set forth in the Model Rules of Professional Conduct as amended in August 2012, and also to comply with other applicable state and federal laws and court rules relating to data privacy and cybersecurity.

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

The Cyberspace Committee co-sponsored the Annual Meeting program "Things My Ethics Professor Didn't Tell Me: Top Ethical Pitfalls for the Social Media Age." The Young Lawyers Committee sponsored the program and the Professional Responsibility Committee and the Consumer Financial Services Committee were other co-sponsors. Panelists included Juliet Moringiello, who co-chairs the Cyberspace Committee's Task Force on Professional Responsibility and Technology. The program covered a wide range of ethical issues that a lawyer's use of social media can raise, including the application of advertising rules to blogs, LinkedIn, and Twitter, the use of Facebook in discovery, and the interaction between lawyers and judges on sites such as LinkedIn and Facebook. The panelists discussed different state approaches to the issues raised, as well as the 2012 amendments to the ABA Model Rules of Professional Responsibility.

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 to 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.

Catch up on the latest in cyberspace law:

### Cyber News You Can Use

**Cell Site Geolocation Info - No Warrant Needed**  
*mCommerce Subcommittee Co-Chair Richard Balough*

The Fifth Circuit recently found that the government can obtain historical cell phone records, including geolocational information, from cell phone providers without a warrant. In doing so, the appellate court reversed the trial court, which had found that, under the Stored Communications Act, the government had to seek a warrant and show probable cause before the records could be obtained. In finding that a search warrant was not necessary, the appellate court said the government was seeking only information that the cell phone provider already collected, so it was a "business record." The appellate court observed that cell phone users "voluntarily" give their geolocation information to cell phone carriers when they make a cell call. In the dissent, one judge cited the *United States v. Jones* case, finding there is a question as to "whether cellular customers have a reasonable expectation of privacy" in their geolocational information. You can read the opinion [here](http://www.cadcourt.uscourts.gov/opinions/13-5259.pdf).

**Call for Papers on Cybersecurity**

*The Northern Kentucky Law Review* and Salmon P. Chase College of Law seek submissions for the third annual Law and 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. Details are available [here](http://www.law.unk.edu/nklylawreview/index.php/nklylawreview/article/view/9481).

**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

**Mobile Contracting**


**Cybersecurity Resource**

Tom Smedinghoff spoke at the ABA Cybersecurity Legal Task Force CLE Program at the ABA Annual Meeting. His topic was "Cybersecurity: A Resource for Attorneys, Law Firms, and Business Professionals."

**Mobile Payments**

Sarah Jane Hughes, University Scholar and Fellow at Maurer School of Law, Indiana University, will be speaking at the September 24-25 Federal Reserve Bank of Chicago symposium on payments. The symposium brings together approximately 150 senior leaders from depository institutions, payments network providers, policy experts, academics, regulators and international experts to discuss pressing questions. Topics that will be discussed include:
Future payments priorities and alternative models - an ecosystem perspective
International lessons learned on industry-level payments strategy work efforts
Cyber-security trends and implications for private/public sector collaboration
Half a dozen interactive working sessions on key areas of collaboration  

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.