Cyberspace Law Committee

Message from the Chair

All of us here at Cyberlaw Central are gearing up for a very busy Spring Meeting in my hometown, Los Angeles. In between quick jaunts to the beach and visits with the family, I expect to be super busy with a full plate of Cyberspace and Business Law programming and meetings. Don't forget that we will have a full Committee Meeting on Thursday morning, April 10 at 9:00 a.m. We will also be holding individual subcommittee and task force meetings throughout the day Thursday and into Friday, and we are offering very current and compelling CLE programming: "A Year after the Executive Order on Cybersecurity: Advising Boards on Cybersecurity Responsibilities" on Friday at 8:00, "Calling all Toasters: Risk Management for the Internet of Things" on Friday at 10:30, and "Public Policy Enforcement through Payment Systems: Inspired Oversight or Misguided Intervention" on Saturday at 10:30. Read on for more details.

PLUS, THIS JUST IN: We are excited to be hosting a joint committee dinner with the Corporate Counsel Committee, the IP Committee, and the Health Law Committee. It will be Thursday, April 10 at 7:00 PM at Park's Korean Barbecue in LA's Koreatown, which is just a little bit west of downtown LA. Come to what is sure to be the most festive of committee dinners - and quite a steal at ticket prices under $50 - and get a taste of the world's biggest Korean neighborhood outside of Korea!

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

- Bitcoins Accepted Here: Virtual Currencies and the Surrounding Issues
- Business Law Section Spring Meeting

Other Programs of Interest

- 29th Annual Intellectual Property Law Conference
- Copyright Clearance and Enforcement in Publishing and Photography
- Clear Skies Ahead: Security and Ethics of Cloud Computing

CLCC Projects

- Criminalization of Technology Group Update
- International Trade Subcommittee Update
- Professional Responsibility and Technology Task Force Update

Cyber News You Can Use

- Cryptolocker Malware Alert

Presentations and Publications of Interest

- Transferring Data during an Investigation
- Privacy of Lawyers' Files in the Cloud
- Bitcoin Regulation

Your Articles Are Welcome

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Cyberspace Law Committee

March 2014
If you have not yet registered for the Cyberspace Law Committee dinner, please do so today! We will be visiting Koreatown - a short 10-minute cab ride from Spring Meeting hotels - where we'll have a fun Korean BBQ dinner with members of the IP, Corporate Counsel, and Health Law Committees. Buy your ticket for the low price of $45 (yes, just $45).

And if you have been waiting until the last minute to register for the Spring Meeting. The last minute is here! The final day to register is Friday, March 21. Register online now.

**Thursday, April 10**

8:00 - 9:00 am - mCommerce Subcommittee

9:00 - 10:00 am - Cyberspace Law Committee Meeting

10:00 - 11:00 am - Cloud Security Checklist Project

11:00 am - 12:00 pm - Cybersecurity Subcommittee

1:00 - 2:00 pm - Cloud & IT Services Subcommittee

2:00 - 3:00 pm - Consumer Protection Subcommittee

3:00 - 4:00 pm - International Trade Subcommittee

4:00 - 5:00 pm - Professional Responsibility & Technology Task Force

**Friday, April 11**

8:00 - 10:00 am - **Program: A Year After the Executive Order on Cybersecurity: Advising Boards of Directors on New Cybersecurity Responsibilities**

Convention Center - 503 West Hall

10:30 am - 12:30 pm - **Program: Calling all Toasters: Risk Management for the Internet of Things**

Convention Center - 503 West Hall

1:00 - 2:00 pm - Marketing and Advertising Subcommittee

2:00 - 3:00 pm - Financial Services & Payments Subcommittee

3:00 - 4:00 pm - Internet Governance Task Force

4:30 - 5:30 pm - *Cyberspace Law Meeting of Subcommittee and Task Force Chairs*

**Saturday, April 12**

10:30 - 12:30 pm - **Program: Public Policy Enforcement Through Payment Systems: Inspired Oversight or Misguided Intervention?**

Convention Center - 515-A West Hall

The Cyberspace Committee is also co-sponsoring several wonderful programs for the BLS Spring Meeting. They include:

- "Board Portals, Virtual Meetings and Electronic Records" - Thursday, April 10, 10:30 am to 12:30 pm
- "Cybersecurity and Data Breaches in Health Law Facilities: Crisis Management for GC's and Outside Counsel" - Thursday, April 10, 10:30 am - 12:30 pm
- "The Creation of the Restatement Third, the Law of Consumer Contracts - What It Means for Companies that Contract with Consumers" - Saturday, April 12, 8:00 - 10:00 am
- "DOJ's Operation Choke Point, State Enforcement Initiatives, and FTC's Proposed Outright Bans: Are They Inspired Public Policy Enforcement through Payment Systems or Misguided Intervention?" - Saturday, April 12, 10:30 am - 12:30 pm. Sarah Jane Hughes is moderating this program,
and speakers include senior representatives from the Clearing House Retail Payments Company, NACHA, Third Party Payment Processors Association, Federal Trade Commission's Western Regional Office, and the Consumer Financial Protection Bureau. Rob Hunter (Banking Law Committee) and Veronica McGregor (Consumer Financial Services) co-chair this CLE and support helped us secure a discretionary slot for this program. Come early to get a seat!

You can see the full Spring Meeting program here.

Other Programs of Interest

29th Annual Intellectual Property Law Conference
April 2-4, 2014
Location: Arlington, VA
Format: Live/In-person

Copyright Clearance and Enforcement in Publishing and Photography
April 10, 2014
Location: N/A
Format: Webinar/Teleconference

Clear Skies Ahead: Security and Ethics of Cloud Computing
April 14, 2014
Location: N/A
Format: Webinar/Teleconference

CLCC Projects

Criminalization of Technology Group Update
Chair Cathy Gellis
The Criminalization of Technology task force is forging ahead on a proposed resolution to put before the ABA to reinforce the importance of protecting attorney-client privilege in the wake of the NSA disclosures. Email Cathy Gellis if interested in participating with this.

International Trade Subcommittee Update
Co-Chairs Hal Burman and John Gregory
The International Trade Subcommittee has been reviewing new e-commerce developments at several regional overseas bodies, and we have been working out the agenda for the Spring Meeting. The agenda for Los Angeles will be:

1. E-commerce developments in the European Union (and related issues)
2. Regional bodies vs. the UN and other general world membership bodies on e-commerce? Currently issues are arising in UNESCAP, APEC, UNECE, the African Union and others. Should the subcommittee develop overall positions for those bodies on e-commerce?
3. Proposals for new topics / projects for the subcommittee

If you have any questions, please contact John Gregory or Hal Burman.

Professional Responsibility and Technology Task Force Update
Co-Chairs Lois Mermelstein and Juliet Moringiello
The Task Force on Professional Responsibility and Technology is concerned about two of the recent revisions to the Model Rules of Professional Conduct and their comments related to the use of technology by lawyers in their practices. The two revisions discussed were (1) the definition of "writing" in Rule 1.0(n) and (2) Comment 1 to Rule 7.3, which distinguishes between solicitations and advertisements. In the opinion of the Task Force, the revisions adopted by the ABA do not adequately address the realities of the use of technology, and we are
going to urge a change to Rule 1.0(n) and a formal opinion to address ambiguities in Rule 7.3. Our goal is to prepare draft memos on these issues for discussion at the Spring Meeting in Los Angeles. If you want to get involved, please attend the Task Force’s session during that meeting (4pm Thursday) or contact Juliet Moringiello or Lois Mermelstein if you haven’t yet done so.

Cyber News You Can Use

Cryptolocker Malware Alert
Richard Balough, mCommerce Co-Chair

Beware of a malware program called Cryptolocker that encrypts a computer's data and holds it for ransom, the FTC and FBI warn. In order to unlock the data, the user must pay a ransom demand sent by email to be paid in bitcoin or some other anonymous payment method. The program is spread primarily through email and "drive-by" downloads. The FTC and FBI warn that the email might look like a routine message from a legitimate company, such as a tracking notice from a shipping company. If the hyperlink is clicked, Cryptolocker encrypts everything on the hard drive and in shared folders. Shortly thereafter, the ransom demand appears. The criminals behind the malware say they will provide the encryption key if the ransom is paid. The FTC said there is no other way to unlock the files. You can assist your clients by advising them (1) to back up their computers often to minimize damage from Cryptolocker, (2) to make sure each computer's browser security setting is high enough to fight off unauthorized "drive-by" downloads, and (3) to be wary of a file with double extensions or files that end in "exe."

Presentations and Publications of Interest

Transferring Data during an Investigation

Renato Opice Blum, partner at Opice Blum, Bruno, Abrusio e Vainzof, will participate as a panelist speaking on "Practical Tools for Effectively Accessing and Transferring Data and Documents during an Investigation" on May 14 at the 4th Summit of Latin America on Anti-Corruption. The event is organized by the American Conference Institute and will take place May 14-15, 2014 in São Paulo, Brazil. Complete information on the event is available here.

Privacy of Lawyers' Files in the Cloud

Sarah Jane Hughes was among the CLC members presenting at the February 28, 2014 Law + Informatics Symposium at the Salmon P. Chase School of Law, Northern Kentucky University, organized by NKU Professor (and committee member) Jon Garon. Her presentation and paper were entitled "Did the National Security Agency Destroy the Prospects for Confidentiality and Privilege When Lawyers Store Clients' Files in the Cloud - and What Realistically, if Anything, Can Lawyers and Law Firms Do in Response?" This presentation and article follow the article published by Professor Hughes and Roland L. Trope in 2011 entitled "Red Skies in the Morning - Professional Ethics at the Dawn of Cloud Computing," 38 Wm. Mitchell L. Rev. 111, but adds discussion of the 2012 Amendments to the ABA's Model Rules of Professional Conduct and the ABA's 2012 Amendments to the Standards for Law Enforcement Access to Third-Party Records. Professor Hughes concludes that some information - given publicized propensities for our federal government to capture electronic communications of many kinds, including what is stored in the cloud - should be returned to in-person communications, storage of tangible items and paper records, and far less reliance on electronic communications and storage for privileged communications and clients' confidential files and data.

Bitcoin Regulation

Finally, Sarah Jane Hughes was interviewed by the American Banker, Law 360, and two newspapers in France about bitcoins. Most of the reporters' questions concerned how and when to regulate bitcoins and whether the United States should prescribe consumer protections for consumers using bitcoins to make
payments. She is reviewing Japan’s equivalent of Chapter 11 of the Bankruptcy Code, under which the bitcoin exchange in Japan, Mt. Gox, recently filed for protection in the Tokyo District. The first court hearing on this reorganization petition was expected to be held on March 7, 2014. Pending further developments (and as of press time for this newsletter), Mt. Gox is expected to qualify as a debtor-in-possession and to be allowed to continue to run the still-viable portions of its business.

**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.