Cyberspace Law Committee

Message from the Chair

Dear Cyberspace Law Colleagues:

June for the Cyberspace Committee means two things: (1) prepare for Annual Meeting and (2) it's crunch time for our annual Survey of the Law of Cyberspace. Plans are now well underway for the former—and for this year's upcoming new Fall Annual Meeting of the Business Law Section in Chicago, we are working on CLE programming on cybersecurity, developments in mobile payments and electronic financial services, considering the legal implications of business use of drones and similar un-manned electronic devices, and more from the new frontiers of bitcoin and virtual/digital currencies.

Meanwhile, throughout the far reaches of our committee—from Brazil to Spain, from Florida to Toronto and Seattle—we have authors busy writing the next edition of our annual Survey for The Business Lawyer, covering a year's worth of case law and legislative developments in a long list of cyberlaw topics. The Survey is published each fall. New to the committee and this newsletter? Feel free to reach out to our committee's leaders for more info about cyberspace law programming and the production of our annual Survey. We often have new writing opportunities, and it's never too early to get involved.

Stay tuned for more news on CLE programs and committee/subcommittee meetings at the Business Law Section Fall Meeting in Chicago. We will hold a full committee meeting, a meeting of each of our task forces and subcommittees, and we will join up with the IP, Corporate Counsel, Health Law, and Young Lawyers Committee for a not-to-be missed multi-committee-dinner extravaganza. Register for the Fall Meeting [here](http://apps.americanbar.org/buslaw/committees/CL320000pub/newsletter/201406/)

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

Business Law Section Annual Meeting
September 11-13, 2014
*Kristine Dorrain, Programming Director*

Registration for the BLS Annual Meeting in Chicago is open now. See Jon Rubens' letter above about key events at the meeting. [Register](http://apps.americanbar.org/buslaw/committees/CL320000pub/newsletter/201406/) before the early bird deadline of July 18 and save $100.

Other Programs of Interest

Ethics 20/20, Security, and Cloud Computing

Date: June 19, 2014
Location: N/A
Format: Webinar

Cyber Security Summit 2014
June 19, Indianapolis IN
The annual summit of the Center for Applied Cybersecurity Research is scheduled for June 19 in Indianapolis. The summit continues a tradition of increasing public awareness of and engagement in important cybersecurity issues. This year's theme is "National Priorities, Local Interests." Cyber risk management, incident response, and research and development are the key focus areas. Headlining the summit are two nationally recognized cybersecurity experts from the U.S. government. Suzanne Spaulding, the Undersecretary of Homeland Security for cybersecurity, and Dr. Douglas Maughan, the Director of the Department of Homeland Security Science and Technology Directorate's Cybersecurity Division, will offer keynote addresses. Other anticipated speakers will be from the NSA and the U.S. Attorney's Office for the Southern District of Indiana. All information about the summit can be found here. There is no fee to attend or register for the summit. Once registered, you will get notices of the complete, updated schedule.

**Cyber Security Summit 2014**  
**October 21-22, Minneapolis MN**

The Cyber Security Summit was started in 2011 out of a concern positioned by the University of Minnesota based on what they saw as a pending national threat, cyber-attacks. The first summit was developed with content focused on changing the paradigm of how we look at digital space and security while educating on cyber threats and providing actionable solutions. The fourth annual summit will take place this fall. For more information, contact the Cyber Security Summit 2014 website.

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**CLCC Publications and Presentations**

**RFIDs, Near-Field Communications, and Mobile Payments: A Guide for Lawyers**

Written by expert cyberspace law practitioners (members of this Committee), this valuable guide covers regulation in the U.S. and abroad and divergent regimes for the protection of consumers' privacy. You can get more information about or purchase the book here.

**Internet Law for the Business Lawyer, Second Edition**

This resource is a great toolkit for advising clients in the electronic environment. The book contains a top 10 list of statutes, relevant cases, and regulations, as well as practice tips and important issues when business is conducted in the ever-evolving electronic environment.

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**CLCC Projects**

**International Trade Subcommittee Update**  
*Co-Chairs Hal Burman and John Gregory*

The IT subcommittee will spend June and July focusing on two areas. Top of the work list will be comments on the latest revision to the UNESCAP (the UN's regional commission for the Asia-Pacific area) proposed treaty on facilitating "Cross-Border Paperless Trade," which has just come in. Second, a review of e-commerce related developments in several international bodies will start in July, including the International Standards Organization (ISO), the International Telecommunications Union (ITU) and the UN Conference on Trade and Development (UNCTAD). E-commerce activities in those bodies that may have an impact on e-commerce law and practice in North America will be discussed by the Subcommittee by conference call. Cyberspace members who would like to participate in either or both of the above should contact co-chairs John Gregory or Hal Burman.

**Cloud Computing and IT Services Subcommittee Update**  
*Co-Chairs William Denny and Phillip Schmandt*

Join the Cloud Computing and IT Services Subcommittee at the BLS Fall Meeting as the group works on preparing a Cloud Computing Guidebook, intended to aid
practitioners when reviewing and negotiating cloud computing contracts and explaining them to clients. The guidebook will stimulate the reader to ask the right questions appropriate to the transaction at hand and the client's needs. It will provide direction to resources, will give best practices tips, and will provide sample clauses from both vendor and customer perspectives. To be part of developing this new publication, please contact Bill Denny or Phillip Schmandt.

Identity Management Task Force Update
Tom Smedinghoff, Chair

On April 29, 2014, the Identity Management Legal Task Force held a meeting in Washington DC to discuss the recently approved EU Regulation on Electronic Identification and Trust Services in the Internal Market (eIDAS Regulation). We met with Andrea Servida, who is the Head of the Task Force "Legislation Team (eIDAS)" of the European Commission Directorate General for Communications Networks, Content & Technology (known as DG CONNECT), and responsible for the drafting of the eIDAS Regulation. The eIDAS Regulation was approved by the European Parliament on April 3, 2014, and a copy is available at bit.ly/1kC3Tnz. Mr. Servida presented and explained the approach to identity management taken by the eIDAS Regulation and addressed questions. This Regulation applies only to online identity management in the context of obtaining government services across Europe, but may nonetheless have a significant impact on private sector identity systems. And as one of the first government efforts to legislate with respect to issues of identity management, its impact may be far reaching.

The Identity Management Legal Task Force will meet at the Business Law Section Fall Meeting in September. A key focus of the meeting will be to review and discuss the draft Task Force Report on identity management legal issues that will be distributed prior to the meeting. The meeting will also include an update on U.S. and EU identity management efforts and trends, including the NSTIC program in the U.S., the IDAP program in the UK, and EU eIDAS Regulation. The Task Force meeting will also bring folks up to date on recent events and the status of the status of our project generally and we will solicit input for future direction. I hope to have a draft Task Force Report ready for distribution and review at the meeting as well.

Task Force on Professional Responsibility and Technology
Co-Chairs Lois Mermelstein and Juliet Moringiello

The Committee's Task Force on Professional Responsibility and Technology is continuing its work updating definitions in the ABA's Model Rules of Professional Responsibility to account for modern technology. After taking a close look at the uses of the terms "writing" and "written" in the Model Rules, we've realized we also need to tackle some of the advertising and solicitation questions in Rules 7.2 and 7.3, such as definitions for "interactive communication" and "targeted communication". We'll continue to work on this and other MRPC issues related to technology over the summer in anticipation of the new Business Law Section Annual Meeting in Chicago. Please contact Juliet Moringiello or Lois Mermelstein if you would like to contribute.

Internet Governance Task Force Update
Co-Chairs Mike Kelly and David Satola

In one of the biggest developments in global Internet governance, the US Department of Commerce's National Telecommunications and Information Administration (NTIA) published on 14 March 2014 its proposal to transfer functions performed by the Internet Assigned Numbers Authority (IANA), a subsidiary of ICANN, from the auspices of the US government to the Internet community. Amongst other things, IANA manages the country-code top level domains (ccTLDs). The announcement states that "Transitioning NTIA out of its role marks the final phase of the privatization of the DNS as outlined by the U.S. Government in 1997." Management of the ccTLD space has been a major bone of contention in the international Internet governance space, with countries complaining that that space should not be in the purview of a single government, in this case the United States. This at a time when the multi-stakeholder model of Internet governance has also been under threat from some governments, especially after the "Snowden revelations" of US government spying through the
NSA. Those governments have been advocating an inter-governmental authority, perhaps under the auspices of the International Telecommunication Union (ITU) to take over those functions. Reactions to Snowden came to a head in the Brazil-sponsored NetMundial conference, which examined the merits of continuing governing the Internet through the multi-stakeholder model. NTIA's announcement carries with it strict conditions under which such a transition might be contemplated, including that "...NTIA will not accept a proposal that replaces the NTIA role with a government-led or an inter-governmental organization solution." A number of governments have raised objections to this process, including some members of the US House of Representatives. ICANN is tasked to manage the consultation process. This issue will feature at ICANN's upcoming meeting in London. Watch this space!

**New Cyberspace Law Books**

If your subcommittee identified a potential book project, please let Sarah Jane Hughes, the Committee's publications director, know as soon as possible. The Committee is updating its roster of possible projects and would like to alert the participants to the procedures that ABA book projects approvals go through and provide other helpful details. The Committee is excited about tackling new book projects during the next three years, so send in ideas you generated in Los Angeles or your other subcommittee deliberations now.

### Cyber News You Can Use

**Chase Seeks "Digital" Banking Lawyer**

*David George Delaney, Professor at Indiana University Maurer School of Law*

The Legal Department of JPMorgan Chase Bank is seeking a highly motivated attorney with five to ten years of legal experience to join the Consumer and Community Banking legal group and be a part of a team supporting the central digital businesses including those specific to online and mobile banking, social media, digital marketing and emerging payments. Preferred location is New York, other locations with a significant Legal presence may be considered. More details are available [here](#).

### Presentations and Publications of Interest

**Wrap Contracts**


**Regulating Virtual Currencies**

Sarah Jane Hughes, University Scholar at Indiana University's Maurer School of Law, has accepted an invitation from the *Yale Journal on Regulation* to provide a feature article on the future of regulating Bitcoin and other virtual currencies, which the Journal plans to publish in early 2015. If his schedule allows, Stephen T. Middlebrook will co-author the piece.

**Managing UGC**

On May 23rd, Lisa R. Lifshitz, Partner at Torkin Manes, presented on "How to Avoid Losing Control of the Message: Managing User Generated Content" for Federated Press' 5th Social Medial Risks Conference in Toronto. On June 16th, she will chair and moderate the "Privacy and Data Security" half-day program for the 2014 Information Technology Law Spring Forum presented by IT.Can and the Law Society of Upper Canada.

### 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.