Message from the Chair

Following a successful first Business Law Section Annual Meeting in Chicago last month, the Cyberspace Committee is preparing for an interesting year in 2015. While we are actively seeking new book ideas, we already have the makings of a strong cyberspace mini-theme of articles in November's Business Law Today, and a terrific set of law-review caliber articles in The Business Lawyer. We also anticipate publishing special items on cloud security and on data privacy concerns in mergers and acquisitions. Please contact us if you want to work on any of these projects or if you have a new project suggestion.

U.S. cyberlaw is seeing an explosion of different state legislative action, from banning biometrics in Florida schools to the California right to clean up teen social media indiscretions to the multi-state effort to ban companies from forcing employees to reveal social media passwords. The U.S. Supreme Court addressed the sanctity of smart phones, and may reach further into the tech world this year. Repercussions of NSA spying are moving through the courts. The Cyberspace Committee will address these issues and more over the next year, through CLE presentations and round table discussions at our Winter Working Meeting, January 23-24, 2015 in Charlotte, North Carolina, at the Business Law Section Spring Meeting April 16-18, 2015 in San Francisco, and at the Business Law Section Annual Meeting September 17-19, 2015 in Chicago.

We plan an increased emphasis on international cyberspace legal issues as we follow the Internet's changing control structures and open a new task force to examine the cyber laws of other countries. Our committees and task forces continue to produce strong presentations at each of the meetings and important writing projects. We welcome yours.

There will also be a new emphasis on finding and retaining the talent of interested lawyers as our new Membership Chairs Lixian Hantover and Mital Patel help expand our outreach to new legal groups and communities. So join us. Add your voice to the growing conversation on law, technology, business and society, and make a difference in the life and thought of Cyberspace.

I look forward to seeing you in Charlotte.

Ted Claypoole, Chair

Report on the BLS Annual Meeting

Cheryl Balough, Committee Vice Chair

The new Annual Meeting of the Business Law Section was a resounding success with more than 1500 attendees. The Cyberspace Law Committee was well represented in the number of committee members attending, the quality of the CLE programs presented, and the interesting and fruitful discussions that took place at the committee and subcommittee meetings.

Our committee sponsored two CLE programs. Steve Middlebrook and Sarah Jane Hughes coordinated a program on "Virtual and Digital Currencies: the Path to Legitimacy and the Need (or Not) for a Regulatory Framework for Consumer Protection," with Sarah Jane also participating as one of the panelists. Richard Balough coordinated and moderated a program on "There's No Business like Drone Business: What to Tell Clients that Want to Use Drones in Their
Business." Both panel discussions were quite lively with views on all sides of the issues passionately presented. If you were unable to attend the Annual Meeting and would like to access the program materials or audio recording of the programs, you can do so here. The "Drone" program materials and audio are numbers 116 and 117 on page 6, and the "Virtual Currencies" materials and audio are located at numbers 122 and 123 on page 7 of the link.

Cyberspace Law also co-sponsored three CLE programs: "Update on Electronic Contracting Best Practices," "Soup to Nuts: Enterprise Security Before and After a Data Breach," and "Marketing and Disclosures in an Electronic Environment." Those program materials/audio can also be found here.

We had more than 30 people attend our Cyberspace Law Committee meeting, where Denis Rice shared a very informative overview on "Bitcoins: Recent Developments in Financing and Government Regulation." Eight of our subcommittees and task forces also held meetings, which included some short presentations, lively discussions on hot topics, and planning sessions for upcoming programs and papers. Please see the reports below from the subcommittees and task forces.

Many thanks to all who shared their expertise and ideas. We will enjoy the fruits of these meetings and the ongoing collaborative follow-up at the 2015 Winter Working Meeting and 2015 BLS Spring Meeting. It's not too late to get involved with these efforts. Just contact the co-chairs of the subcommittees or task forces, or contact new committee chair Ted Claypoole or vice-chair Cheryl Dancey Balough.

Cyberspace Law Institute and Winter Working Meeting

We hope that you have January 23-24, 2015 set aside for the 2015 Cyberspace Law Institute and Winter Working Meeting. We will gather in Charlotte, NC at the Omni Hotel. The meeting will include 4-5 hours of CLE programs, roundtable discussions, and work time, as well as chances to mingle and network. Please plan to attend ALL DAY on both January 23 and 24 as the days will be packed.

We still have one or two spots available for CLE programs and openings for several roundtables. Please submit your proposals to us right away, noting that:

1. CLE sessions will be 20, 30, or 40 minutes long; this means no more than 1-2 presenters per program, who must be "live" at the meeting.
2. For CLE programs, original written materials will be required; the deadline for materials is tentatively November 15, 2014. Scholarly papers are welcomed, but not necessary, and detailed PowerPoints are accepted.
3. The audience will be acquainted with the basic knowledge, so in-depth, concentrated (geeky), and cutting-edge cyberlaw topics are especially welcomed.
4. Roundtable moderators will not prepare CLE materials but will prepare a discussion outline and facilitate the group discussion on a topic. This is a great opportunity to review new cases, unresolved issues, and emerging theories with a small but interested group.

If you're new to the committee, this is also a great way for us to get to know you and your expertise! If you have a proposal (or maybe just an idea), please let us know. Please submit all proposals to Cheryl Balough (cbalough@balough.com) and Ted Claypoole (tclaypoole@wcsr.com) with the following:

For WWM CLE

- Tentative title
- Paragraph description (consider a half-hour time frame when defining scope)
- Explanation of how this is cutting edge
For a WWM Roundtable

- Project description
- Whether this is a current or proposed project
- Whether there is currently a Subcommittee associated with it
- If you are willing to moderate, or if not, a suggested moderator

Please don't hesitate to email either Cheryl or Ted with questions. We look forward to your proposals and to seeing you in Charlotte. Registration will open in November.

Subcommittee and Task Force News

From the Electronic Payments and Financial Services Subcommittee - Cochairs Steve Middlebrook and Ed Morse

The subcommittee had a great meeting in Chicago. We spent some time reviewing recent guidance on virtual currencies from FinCEN, CFPB, SEC, IRS, and a number of states. There was extended discussion on the "Bitlicense" issued by the state of New York. The subcommittee’s next project will focus on creating practical guidance for businesses interested in accepting virtual currency. As a first step, look for an article on the topic in a future Business Law Today.

In addition, Ed Morse is organizing a presentation for the Winter Working Meeting on legal restrictions being place on payment networks to curtail illegal or disfavored industries (drugs, legal marijuana, gambling, etc.). Panelists will include counsel for internet/mobile payment network Dwolla.

The comment date for the New York State Department of Financial Services proposed framework on virtual currencies is scheduled to close on October 25. Coinbase.com is publishing comments it receives, but the DFS is not posting comments it has received. If anyone files a comment, please share a copy with Sarah Jane Hughes.

From the Internet Governance Task Force - Cochairs David Satola and Michael J. Kelly

A lot has happened in the world of Internet governance this year, starting with revelations by Eric Snowden of the NSA’s extensive surveillance program. That sent a shock wave through the Internet world, especially for those arguing for not regulating the Internet (i.e. those in favor of a "multi-stakeholder" framework for Internet governance).

Then in March the US Department of Commerce’s National Telecommunications and Information Agency (NTIA) announced it was starting a process to consider transitioning oversight of some technical functions currently performed by the Internet Assigned Numbers Authority (IANA), like Internet numbering resources, protocol assignments and management of domain names, away from IANA over to the "multi-stakeholder community." IANA, effectively a subsidiary of ICANN, traditionally performs certain technical functions essential for the smooth and secure running of the Internet, including control of the Internet Protocol addressing system (i.e., numbering resources, including IPv4 and IPv6), managing IP protocols, and managing the rootzone database for domain names (domain name management). NTIA has had oversight over these functions via a series of agreements with ICANN in 1998 under a Memorandum of Understanding (MoU). The MoU went through several iterations and morphed into what was then called the Joint Project Agreement (JPA), which itself underwent one amendment. In 2009, the JPA was replaced with a document called the Affirmation of Commitments. Over time, in each iteration of the agreement between NTIA and ICANN, NTIA has loosened its oversight over the performance of these IANA functions by ICANN. Consequently, this latest move by NTIA can be seen as part of a continuous evolution away from NTIA’s control and oversight over the IANA functions.
The subcommittee presented more details on this in a program at the Business Law Annual Meeting. The slides from that program are here.

**From the Mobile and Connected Devices Subcommittee - Cochairs John Rothchild and Richard C. Balough**

The new Mobile and Connected Devices Subcommittee is the successor to the mCommerce and Consumer Protection Subcommittees.

At the annual meeting, the new group discussed several projects for the near term. They include potential panel presentations on:

- **Data Due Diligence in a Merger and Acquisition Transaction.** The discussion would explore who owns the database being transferred, what rights consumers have, and whether those supplying the underlying data gave valid consent.
- **Remote Disablement of Interconnected Things.** The panel would explore the issues that arise when a seller of a connected device seeks to disable it remotely in the form of repossession.

Other topics under consideration for presentations, papers, or articles include privacy regarding facial recognition, cross-device connection and single sign-on, liability issues regarding self-driving cars, RFID, and big data.

If you are interested in any of the topics or have suggestions, please contact co-chairs John A. Rothchild at jrothchild@wayne.edu or Richard C. Balough at rbalough@balough.com.

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### Committee Members Out and About

Robert Bond of Speechly Bircham in London recently moderated a webinar on Big Data and the need for big guidance. The presentation materials can be found here.

Sarah Jane Hughes presented at the Federal Reserve Bank of Chicago's Annual Payments Symposium on September 25th. Her presentation covered faster payments and math-based payments. She also has three articles soon to be in print or available electronically. One deals with the NSA and lawyer-client privilege and confidentiality that she prepared for the symposium on Law + Informatics at Northern Kentucky University's Salmon P. Chase College of Law last February, the other two deal with virtual currencies. Steve Middlebrook is the co-author of one of the two on virtual currencies.

Lisa R. Lifshitz, Chair of the Section’s Technology Committee, recently organized, chaired, and spoke at the well-attended Thomson Reuters 2014 Cloud Computing Forum in New York City on September 17. Lisa provided an overview of key clauses in cloud legal agreements and also participated in the panel on “Privacy/Data Security Issues in Cloud Computing” that was moderated by the ABA’s own Lucy Thomson. Roland Trope also chaired a breakout session on “Clouds for Government”. A link to the event brochure and detailed agenda can be found here.

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### Write!

Have you written an article or spoken on a topic cyberspace folks would be interested in? Your newsletter contributions are always welcome. Email Lois Mermelstein.