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November 21-22, 2014
Washington, D.C.

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Lois Mermelstein

Message from the Chair

Happy November. This month should see the release of several articles from Cyberspace contributors in Business Law Today. In a mini-theme called "Watches and Wallets, Compliance and Rebellion: The State of Cyberspace Law", we cover a wide spectrum of technological legal issues ranging from the Internet of Things to practical use of Bitcoin. Look for it this month, and know that we are always looking for authors of short articles to represent the Cyberspace Law Committee in Business Law Today. This is a great way to chalk up a formal publication of your favorite technology-related legal topics.

And of course, our Winter Working Meeting is just around the corner - January 23-24, with a cocktail party on the evening of January 22, high above the city of Charlotte. Four hours of CLE, mild weather, and a host of important round table discussions and book projects await the intrepid winter traveler. Also expect excellent conversations on cutting edge cyberspace topics with some of the top technology lawyers in academia, government, corporate representation and private practice. This is our first Winter Working Meeting close to the East Coast in five years, so it should be a short trip for many of you, and an interesting new destination for others.

We have made our proposals for the ABA Business Section Spring Meeting in San Francisco this April and I will write in this space when I know which of our suggested sponsored presentations and panels the Section has selected for inclusion.

Write or call with any questions on the upcoming meetings. The Winter agenda is set, but we are always looking for good presentation and project ideas.

Ted Claypoole, Chair

Cyberspace Law Institute and Winter Working Meeting

Registration is open for the 2015 Cyberspace Law Institute and Winter Working Meeting. We will gather on January 23-24, 2015 in Charlotte, NC at the Omni Hotel. The meeting will include 4 hours of CLE programs, along with roundtable discussions, subcommittee/task force work time, and ample opportunity to mingle and network. CLE programs will start early morning on Friday, January 23, so plan to arrive on Thursday for socializing with your colleagues at a cocktail party sponsored by Womble Carlyle. Programming will wrap up early afternoon on Saturday, January 24, with time left in the day for you to explore all that Charlotte offers. A program schedule will be posted soon.

CLE topics include:

- What's new in cyberinsurance
- Legality of game streaming
- Electronic payments: winnowing the network and avoiding the shadows
- Big data and foreign law considerations
- Operating in a post-Aereo world
- Breaking in through the cloud
- Year in review, with an emphasis on patent trolls

Committee members also will be working on a number of publication efforts and various other subcommittee and task force projects. We look forward to committee newbies and old-timers alike. Register now.
BLS 2015 Spring Meeting

The Business Law Section 2015 Spring Meeting will take place April 16-18 in San Francisco at two hotels near the Convention Center. The meeting will feature more than 65 CLE programs. Thanks to our members' great suggestions, the Cyberspace Law Committee submitted four proposals, and we expect that at least three of them will be approved. The list of CLE selected programs will be issued soon. Mark your calendars for April 16-18, 2015 or even register now. After the wildly successful BLS Annual Meeting in September, the Spring Meeting is not to be missed.

Committee Doings

From the Mobile and Connected Devices Subcommittee
Co-chairs Richard Balough and John Rothchild

The committee is developing two panel presentations for the Business Law Section spring meeting:

- Data Due Diligence in a Merger and Acquisition Transaction: 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: issues that arise when a seller of a connected device seeks to disable it remotely as a form of repossession or for some other reason.

From the Subcommittee on Cloud, Platform and Analytics
Co-chairs Richard Cohen and Ariane Siegal

The Subcommittee Co-Chairs are starting to actively put together ideas for a book project covering cutting edge issues in cloud, platform, and data analytics. Here is an initial outline:

Chapter 1. Introduction

Chapter 2. General Discussion of Key Legal Issues Associated with Cloud, Platform and Data Analytics-Privacy, Security, Liability and Ownership

   A. Capturing of Data
   B. Transfer, License and Use of Data
   C. Storage, Processing, Correcting and Destruction of Data
   D. TBD

Chapter 3. Additional Emerging Legal Issues associated with Cloud, Platforms and Data Analytics

   A. Discrimination and Redlining
   B. Data Breach Management
   C. Regulation, Litigation and Enforcement
   D. TBD

Chapter 4. Industry Case Studies: Data Ownership, Security, Privacy and Liability for Faulty Data Analytics, Algorithms, Platforms and Cloud Services:

   A. Automobile Industry
   B. Airline Industry
   C. Financial Industry
   D. Medical Device and Health Industry
   E. Retail
   F. Energy
   G. TBD
Chapter 5. Addressing the Legal Issues: Liability and Risk Issues: Contractual Terms

A. Liability Clauses
B. Indemnity Clauses
C. Security, Privacy, Confidentiality and Audit Clauses
D. Insurance
E. Data Breach
F. TBD

Chapter 6. Investing in Cloud, Platform and Data Analytics. Due Diligence and Special Issues.

Chapter 7. The Impact of Cloud, Platform and Data Analytics on the Practice of Law

Chapter 8. International Considerations:

A. Canada and the Americas
B. Europe
C. Asia

Committee members are welcome to contribute ideas, suggested chapters, chapters themselves, suggested chapter writers, and editing expertise. If you would like to contribute, please provide your initial ideas, thoughts and submissions to Richard Cohen (rcohen@kelleydrye.com) and Ariane Siegal (asiegel@signalhilldigital.com) by the end of the year. We look forward to working with you.

In the News


Internet of Things

By Richard C. Balough

An "internet-of-things" case with a new twist was decided on November 10 by the Ninth Circuit. A truck buyer who received a free three-month trial for satellite radio services cannot be forced into arbitration by the service provider when he did not knowingly agree to the contract. The Ninth Circuit case raises the broader question of how providers of connected services for vehicles who are not the truck manufacturer can bind customers. In reversing the trial court, the appellate court found that a reasonable person "could not be expected to understand that purchasing a vehicle from Toyota would simultaneously bind him or her to any contract with Sirius XM, let alone one that contained an arbitration provision without any notice of such terms." You can read the full decision, Erik Knutson v. Sirius XM Radio, Inc., Ninth Cir. No. 12-56120, here.

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.