Message from the Chair

We are looking forward to the Business Law Section 2015 Spring Meeting, which will take place April 15-18 in San Francisco. You can still join us in person or by phone.

In addition to the 60+ CLE programs offered, the Cyberspace Law Committee has a wonderful agenda planned:

- Arrive early on Wednesday, April 15, and join us for a short hike in the Redwoods in Marin County and/or dinner in Sausalito.
- On Thursday, April 16, we have a full day of committee, subcommittee and task force meetings to move forward with the many projects that took shape at Winter Working Meeting. Access the schedule here.
- We are sponsoring three CLE programs:
  - Remote Disablement via the Internet - coordinated by John Rothchild - Friday, April 17, 10:30 AM - 12:30 PM
  - Right to Be Forgotten - coordinated by David Satola - Friday, April 17, 2:30 PM - 4:30 PM
  - Data Privacy Due Diligence in M&A Transactions - coordinated by Robert Bond - Saturday, April 18, 8:00 AM - 10:00 AM
- We also have the committee dinner planned -- a fun way to enjoy San Francisco street food and your fellow cyberspace lawyers.

Read on for all the details. We look forward to seeing you in San Francisco.

Ted Claypoole, Chair

Business Law Spring Meeting

We look forward to seeing many of you at the Spring Meeting in San Francisco. Even if you cannot attend in person, you can still participate in all committee/subcommittee meetings via phone. The online schedule with all call-in numbers is available here. Please do join us via phone on in person. Note: On-site registration will be available.

As you plan your schedule, keep in mind the offerings listed below.

Cyberspace Law Committee Meetings (all on Thursday, April 16)

- 8 - 9 am: Cyberspace Law Committee Publications meeting
- 9 - 10 am: Cyberspace Law Committee meeting (with presentation of FTC privacy enforcement policy from Nithan Sannappa, an attorney in the FTC's Division of Privacy and Identity Protection)
- 10 - 11 am: Financial Services and Payments Subcommittee meeting
- 11 am - noon: Cloud, Platforms, and Analytics Subcommittee meeting
- Noon - 1 pm: Cybersecurity Subcommittee meeting
- 1 - 2 pm: Internet Governance Task Force meeting
- 1 - 2 pm: Enterprise Technology Subcommittee meeting
- 2 - 3 pm: Mobile and Connected Devices Subcommittee meeting
- 3 - 4 pm: International Trade Subcommittee meeting
- 4 - 5 pm: Non-U.S. Cyber Regulations Task Force meeting
- 4 - 5 pm: Social Media Subcommittee meeting

CLE Programs Offered by Cyberspace Law Committee
Thursday, April 16

- 10:30 AM - 12:30 PM: Protecting Your Company from Cybersecurity Risks: Cybercrime Incident Response Techniques (we co-sponsor)
- 2:30 PM - 4:30 PM: Cyber Security: The Cold, Hard Reality of Protecting Financial Information (we co-sponsor)
- 2:30 PM - 4:30 PM: A Taste of IP Wine Law (we co-sponsor)

Friday, April 17

- 10:30 AM - 12:30 PM: Losing Control: Who Owns Your Devices Now that They Are Connected to the Internet? (Program Chair: John Rothchild)
- 2:30 PM - 4:30 PM: The Right to Be Forgotten: What Your U.S.-Based Business Clients Need to Know about the EU Rule (Program Chairs: David Satola and Mike Kelly)

Saturday, April 18

- 8:00 AM - 10:00 AM: Data Privacy Due Diligence in M&A Transactions (Program Chair: Robert Bond)

Social Events

Wednesday, April 15

- 2:30 PM - evening: Hike in Muir Woods led by Jon Rubens, followed by dinner at FISH in Sausalito. A few more spaces are available for the hike (catch the 2:30 ferry), and all are welcome to join us for dinner (catch the 5:30 ferry). See our Cyberspace Law website for more details, and contact Jon Rubens if you want to join the hike.
- 6:30 - 8:00 PM: Diversity Networking Reception

Thursday, April 16

- 4:30 PM: Wine Tasting, organized by IP Subcommittee
- 5:00 - 6:00 PM: Icebreaker Reception
- 6:00 - 7:30 PM: Welcome Reception
- 7:30 - 10:00 PM: Joint Committee Dinner (registration now closed; check onsite for any cancellations and resultant openings)
- 10:00 - 11:30 PM: Sweet Ending Dessert Reception

Friday, April 17

- 9:30 PM - 12:00 AM: Section Suite Crawl

Saturday, April 18

- 6:00 - 7:30 PM: 2015 Section Annual Kick-Off Reception

Committee Doings

Survey of the Law of Cyberspace - Authors Needed

John Rothchild, Survey Editor

The Committee is looking for authors to write segments for its annual Survey of the Law of Cyberspace. The Survey appears each year in The Business Lawyer, a print publication of the ABA Business Law Section. You can take a look at last year's Survey (ABA member sign-in required).

Contributing to the survey is a great way to participate in the work of the Committee as well as to showcase your expertise. The Business Lawyer is the premier business law journal in the country, circulating to more than 60,000 readers. Even if you do not attend many in-person meetings of the Committee, you can still volunteer to write.
The Survey format involves short articles - typically 2,500 to 5,000 words - covering important case law, legislation, and administrative rulings. Authors must be attorneys. Student authorship is not allowed, though credit may be given for those who assist you. Law review format is required. (Dust off your Bluebook - footnotes and pinpoint citations are essential!) Deadlines for submission will begin in mid-May.

Both new and returning authors are welcome. A list of potential topics can be found on the Committee's website. This list is only suggestive, and not all of the topics will be suitable in any given year. You should feel free to propose other topics, but be aware that a topic must have sufficient new developments during the relevant time period (June 1, 2014 to May 31, 2015) to justify inclusion.

A few other points to keep in mind:

* Comments on pending legislation are rarely approved as topics, though pending legislation can be discussed tangentially.
* The primary audience is U.S.-based lawyers. Surveys of foreign legal developments should address the impact on U.S. lawyers.
* A Survey article is neither an opinion/advocacy piece, nor a simple case summary. It should discuss key authorities, extract critical points, and contextualize them for readers.
* Topics must have relevance to a business lawyer and/or the practice of business law.

If you are interested in writing, let me know at jrothchild@wayne.edu. If you have already expressed your interest and received a response from me, there is no need to contact me again.

I very much hope you will consider writing for the Survey.

From the Identity Management Legal Task Force

Chair Tom Smedinghoff

The Identity Management Legal Task Force will cosponsor a public meeting with the US Department of State and the Georgetown University Law School Center on Transnational Business and the Law on the subject of identity management and related trust services. The purpose of the meeting is to obtain the views of stakeholders on the possibility of the UN Commission on International Trade Law (UNCITRAL) undertaking work in the areas of identity management and related trust services. In light of recent identity management legislation adopted in the European Union and in Virginia, the issue of digital identity management has now surfaced as an important international legal topic. Accordingly, it is expected that a proposal will be made to the July 2015 annual meeting of UNCITRAL to undertake international legal work on these topics. Thus, this meeting will seek to obtain input on the subjects in advance of the UNCITRAL annual meeting.

The meeting will be held on May 29, 2015 from 10:00 am until 4:00 pm at the Georgetown University Law Center, 600 New Jersey Avenue NW, Washington DC 20001. Anyone who would like to attend the meeting should email PIL@state.gov providing full name, affiliation and email address to register for the meeting. An agenda will be provided to everyone who registers to attend the meeting.

From the International Trade Subcommittee

Co-chairs Hal Burman and John Gregory

We have been having two working conference calls monthly and will continue that following San Francisco. A number of international bodies have active e-commerce law efforts underway which can affect US and Canadian interests.

The San Francisco meeting will review these to set priorities for the spring and summer, since resources limit what we can actively track and provide input and recommendations on at any one time.
Leading candidates on recent calls were UNCITRAL’s projects on transferability of interests internationally by computer and on-line e-dispute resolution for cross-border low value transactions; UNECE CEFACT’s recent Russian proposals for trusted e-messaging and signature systems; and UNESCAP and ASEAN projects on single window e-systems which promote interoperability as well as some type of obligation to accept data and e-documents submitted thru another participating country’s e-system.

The Subcommittee will also consider recent developments at the WTO that may merit Cyberspace attention.

Please join us on Thursday from 3-4pm in the Marriott Marquis Sierra - A Room, fifth level.

Following the Spring meeting, the next subcommittee conference calls will be Friday April 24 at 12:30 EST and Tuesday April 28 at 3:00 EST, the first on Russian proposals at UN Cefact, the second on UNCITRAL rules on transferability of rights. All Committee members are welcome to join.

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A Different Take on Net Neutrality  
By David Satola

Most coverage of the FCC’s recent net neutrality decision focuses on the economic interests of stakeholders – network operators, content providers and consumers. While the economic and commercial dimension is important, there is an equally important dimension of "net neutrality" - the socio-economic benefits of a free and open Internet, including respect for basic human rights.

In the United States, the term "net neutrality" has its legal roots in the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act"). Similarly the debate in the United States revolves largely around how the Internet is characterized under the Act. In Europe, by contrast, not being bound by the legacy of the Act, the debate has also included issues of protecting basic human rights on the Internet - access to information and freedom of expression. It is not to say that these rights are not also protected under the FCC’s recent decision, but the debate around net neutrality is not as one-dimensional as its coverage in the US press might seem [see, e.g., decision FCC Votes to Regulate the Internet as a Utility; and Dutch Offer Preview of Net Neutrality].

While a convenient shorthand, the term "net neutrality" used in the US has a different meaning and context than how it used elsewhere. Conflating the debate as it has evolved in the US. with its US law legacy issues (whether to regulate the Internet as a public utility), with approaches elsewhere fails to give full recognition of the relationship between basic human rights (and the role that respect for those rights plays in keeping the Internet open) and technical management of Internet traffic (net neutrality).

For example, in 2011 the Council of Europe promulgated its take on the issue, deliberately avoiding the term "net neutrality":

"Users should have the greatest possible access to Internet-based content, applications and services of their choice, whether or not they are offered free of charge, using suitable devices of their choice. Any traffic management measure or privilege should be nondiscriminatory, justified by overriding public interest, and must meet the requirements of international law on the protection of freedom of expression and access to information."

Who bears the cost of bulk video download is undoubtedly an important consideration. But imagine a situation where a dominant telco (maybe a state-owned one) has been granted authority to discriminate (i.e., technically manage) between packets travelling over the Internet and uses that authority to suppress speech or political dialogue under the guise of "technical traffic management". Clearly there are more sides to the social and economic impacts of the net neutrality discussion.
It is also clear that large parts of the globe will look to the FCC's decision for policy and legal guidance in how to approach net neutrality. It will be difficult, but increasingly important, to balance issues of consumer choice, business interests, and basic human rights if the Internet is to continue to be a place that encourages innovation and an engine of economic opportunity.

Other Programs of Interest

Best Practices for Incident Response and Cyber Coverage  
April 21, 2015  
Location: N/A  
Format: Webinar

Coping with COPPA and Drafting Effective Browse and Click Wrap Agreements  
April 21, 2015  
Location: N/A  
Format: Webinar

On Thursday, April 23rd, the Uniform Law Commission will hold a meeting of stakeholders in the virtual currency industry to discuss the report from the Study Committee on Alternative and Mobile Payments. The meeting will be hosted by the Conference of State Bank Supervisors at its DC headquarters. Space is extremely limited. Sarah Jane Hughes has served as the reporter for the Study Committee. Steve Middlebrook is one of several ABA advisors to the Study Committee, and CLC member Richard Field is SciTech's advisor. If you have questions before or after the April 23rd meeting, members may contact Sarah Jane at sjhughes@indiana.edu.

Daily Fantasy Gaming and the Law  
April 28, 2015  
Location: N/A  
Format: Webinar

ItechLaw 2015 World Technology Law Conference  
April 29 - May 1, 2015  
Location: San Diego, CA  
Format: In-Person Conference

The FCC's New Net Neutrality Rules: A Modernist Or Outdated Regulatory Approach For The Information Age  
May 14, 2015  
Location: N/A  
Format: Webinar

Cybersecurity Summit  
May 18, 2015  
Location: Washington, DC  
Format: In-Person Conference

Committee member Lisa R. Lifshitz is the Course Leader at the upcoming "Cloud 2.0 - Drafting and Negotiating Effective Cloud Computing Agreements" conference on June 1 in Toronto. More details are here.

A Note from the Editor

In addition to reporting on the committee's work and what its members are up to, we'd like the newsletter to include articles on topics of interest to members. Articles should be 250-500 words, timely, and original content not already published elsewhere. To submit an article or ask questions, please contact the editor, Lois Mermelstein.