Message from the Chair

Happy May to all Cyber Lawyers and welcome to the newsletter.

Please note that time is short for proposing a panel or presentation for the September Business Law Section Annual Meeting in Boston. We are still seeking ideas, speakers and moderators for CLE discussions of cyberspace topics, so from the many facets of data security regulation to the most arcane corners of the tech business, we want your ideas and topics. What interests you? Drones, biometrics, self-managing warehouses/manufacturing, FinTech, the coming VR revolution, distributed ledger technology, cyber fraud, tech regulators and the lawyers who love them? Now is the time to tell us. We have another few days to propose topics.

The conference in Montreal went well, aside from the predictable snow. We learned much and enjoyed the company of cyberlawyers and business lawyers from all over the world. Our Committee hosted a mock Apple vs. Justice Department argument on a company's rights and responsibilities in encrypting consumer hardware.

Keep your eyes open for the first ever Business Law Today Cyberspace Makeover, where the entire May issue will be filled with cyber articles, from self-driving cars to Chinese cyberlaws to rogue mobile apps. You should enjoy our complete domination of BLT. Next month, we will also be starting a Cyberspace Law column in upcoming Business Law Today publications, so we will have a hand in the rest of their publications this year.

Finally, please note that we have several book projects in various stages, including Social Media Law, Data Security in Merger Transactions, and Twenty-First Century Payments. We are looking at possible book projects in Analytics and in the Internet of Things, so let us know your interest in writing or editing. We need your talents.

Enjoy the rest of Spring.

Ted

Ted Claypoole
Chair, Cyberspace Law Committee of the ABA Business Law Section

Program Materials Available from Spring Meeting

If you were not able to attend the Business Law Section Spring Meeting in Montreal, you can still listen to the audio for the 70+ CLE programs offered by Cyberspace Law and other committees. This link will give you access to both the audio and program materials.

BLS Annual Meeting - September 8-10

Registration is open for the Business Law Section Annual Meeting in Boston. Once again, Cyberspace Law Committee will have a full day of committee/subcommittee meetings-tentatively scheduled for Thursday, September 8. And we will certainly sponsor a number of CLE programs. Early-
bird rates are available now, so secure your registration.

### Seeking Contributors to the Annual Survey of Cyberspace Law

The Committee is looking for authors to write sections of 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 here (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 some 40,000 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 developments in case law, legislation, and administrative rulings. Contributions must be in law review format, with citations conforming to Bluebook style. 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 there must be sufficient (and sufficiently important) new developments during the relevant time period (June 1, 2015 to May 31, 2016) to justify inclusion of a topic.

If you think you might like to contribute to the Survey, or just want to know more, contact Survey Editor John Rothchild, jrothchild@wayne.edu.

### Announcing the new Legal Analytics Joint Working Group!

The Cyberspace Committee is proud to announce that it is one of the original parent committees for the Section's new Legal Analytics Joint Working Group. The working group's mission is to explore, and educate business lawyers about, the use of math and economics in the substantive practice of business law. Chaired by Warren Agin, it will cover the impact of tools such as legal analytics, risk analysis, statistics and probability analysis, game theory, economic theory on decision making, and behavioral economics.

Committee members interested in joining the new Legal Analytics group can sign-up online or e-mail Warren Agin at wea@swiggartagin.com.

### Committee Doings

**From the International Trade Subcommittee**  
*Co-chairs Hal Burman and John Gregory*

The International Trade Subcommittee met in Montreal for two hours, including occupying the slot for the Identity Management task force, since that topic is on the UNCITRAL agenda for its Working Group on Electronic Commerce. Tom Smedinghoff, Chair of the Committee's IdM task force, joined the meeting by telephone.

Participants discussed who needed to be identified and why. One also might need to identify things online, not just people or legal entities. It would be important to have accurate identification of their identity in any event: consider communicating with a power plant about its output. However, for contractual
purposes, one would need a person or legal entity (taking into account that the
UN E-communications convention and various laws permit contracts to be
formed by automated systems, but only on behalf of legal entities).

The Uniform Law Commission has also formed a study group on identity
management, to see if a full-scale legislative project is needed. Tom
Smedinghoff has asked to join that group.

There was a brief mention of the Russian proposal, repeated in different
international forums, to set out mutual recognition rules for e-communications.
This proposal is still at a very general level. It is more likely to be acceptable if it
is an optional rather than a mandatory system for countries joining it; would
countries have to adopt the standards and thus recognize compliant foreign
communications? And who would determine compliance? The EU Electronic
Identity and Signature regulation ("eIDAS") was optional, at least to start.

Participants discussed the Virginia Electronic Identity Act, which aims to
encourage the creation of free-standing identity confirmation businesses, by
exempting them from liability for error if they met technical standards which are
still - as of the April meeting - undeveloped. It was noted that the treatment of
liability - and the exemptions from it, and the ability to disclaim it - were key
difficulties in the Utah Digital Signature Act of 1995.

Tom had proposed a list of possible contents of e-identity legislation, and the
meeting explored several elements of it. (The list is on the Subcommittee's web
page under Reports and Publications.) There was some concentration of the
role of privacy in an identity management system, whether relying parties would
have a right to the underlying ID info, etc., which becomes more critical when
cross-border systems are involved. It may depend how strong the ambient
privacy protections are. If weak, then the ID management system may need to
protect it directly.

The meeting noted the forthcoming UNCITRAL Colloquium on identity
management, to be held later in the month. The discussions there would be the
subject of a Subcommittee conference call in due course.

From the Enterprise Technology Subcommittee
Co-chairs Candace Jones and Cheryl Burtzel

In Montreal, the Enterprise Technology Subcommittee discussed its current
project, Contracting with Vendors for Information Security and Resiliency.
The conversation focused on the topics for commentary and inventory of sample
clauses. We expect to begin drafting the commentary, which will provide
foundation and context for our audience, and collecting sample clauses and
accompanying annotations. Our audience is primarily business lawyers, whose
experience with cybersecurity issues varies, but may also include lawyers from
other disciplines and clients representatives from various industries.

We will build out the commentary about information security provisions in vendor
contracts through a series of workshop conference calls. The purpose of the
calls is to have structured discussion about the particular topic for the call
agenda. We have made arrangements for monthly conference calls currently
scheduled for 12:00 noon Eastern Time on the first and third Thursday of
each month. Our first call will occur on Thursday, May 5, 2016 at 12:00 Noon
Eastern.

An agenda for each call will be distributed the week of the call to those who sign
up with Cheryl Burtzel or Candace Jones. We welcome volunteers to serve as
"reporters" for the workshop calls and author/editors of the materials we develop
based on those calls.

Please let us know if you are interested in participating in one of those roles or
otherwise contributing to the project. A near-term goal is to produce a working
paper that can serve as a basic reference for approaching cybersecurity in
vendor contracts.

From the Mobile and Connected Devices Subcommittee
Co-chairs John Rothchild and Richard Balough
The subcommittee met in Montreal to continue planning for a panel discussion that it proposes to offer at the BLS annual meeting in Boston this September. The original idea for the panel was to address the Federal Trade Commission’s application of its “unfairness” authority to manufacturers and users of connected devices that lack adequate security protections. The consensus of those present was to expand the scope of the discussion in order to attract a broader audience. Subcommittee leadership will proceed with planning the program and will seek additional input from those who have expressed interest in it.

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

The Electronic Payments and Financial Services subcommittee met on Thursday, April 7, in Montreal, with more than 20 attendees. Our invited guest, Jillian Friedman, legal advisor at the National Bank of Canada, led a discussion on distributed ledger technology in the financial services industry (or as we like to call it, “blockchain for bankers”). This discussion continued the conversation we began at the Winter Working Meeting, but focusing on the financial services establishment rather than the disruptors who value privacy over other benefits of conventional payment technologies.

Steve Middlebrook also provided a brief update on the recent enforcement action of the CFPB against Dwolla concerning representations about its security. Though Dwolla did not have any security breach affecting its payment network, it nevertheless received a $100,000 penalty for alleged misrepresentations about its data security practices. The consent order can be found here. With eight potential regulators addressing the electronic payment space, the potential for regulatory entanglement and conflicts in the enforcement regime is huge. This is a significant issue that deserves attention in future CLE programs. Thanks to all who attended and enriched these conversations. Thanks also to members Erin Fonte, Denny Rice, and Jillian Friedman, who joined Ed Morse in putting on a CLE program, The Emerging Cashless Society, which played to a capacity audience in Montreal. You can find program materials here. An audio file is also available for that program on the ABA website.

For our next meeting in Boston, we have invited Jess Cheng of the general counsel's office at Ripple, a relatively new company using bitcoin to facilitate international payments. Ms. Cheng will help us to explore how distributed ledger technology can be utilized in cross border payments. Given the recent hacking incident involving the SWIFT network, there is much to discuss in the international context. We will take up these issues, and a few new ones, in September.

Upcoming Programs of Interest

FTC Big Data Report-Summary and Considerations
May 24, 2016
Format: Webinar

Cloud Computing Contracts 101: Seven Key Clauses & Seven Common Mistakes
June 7, 2016
Format: Webinar

Yourbrandsucks.com: A Primer on Gripe Sites and How to Deal with Them
June 10, 2016
Format: Webinar

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 (including on your firm's website). To submit an article or ask questions, please contact the editor, Lois Mermelstein.