



June 2016

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[Business Law Section Annual Meeting](#)

 September 8-10, 2016
 Boston, MA

Editorial Board

[Lois Mermelstein](#)

Message from the Chair

Cyberlawyers, Please dig back through your email and review the Cyberspace Law Themed Business Law Today issues with articles on the law of Data Privacy in China, of self-driving cars, of biometrics in U.S. states, of cybersecurity standards, of cyber data diligence in mergers, of the right to be forgotten and of collecting consumer voices. Plus so much more.

In addition, every Business Law Today edition for the rest of the year will have a "Cyberlaw Corner" with at least one article submitted by our Committee. So look for them and read them all. Write one if you like. We may need some more articles by the end of the year.

Winter Working Meeting 2017 will be at the U.S. Grant Hotel in San Diego, so come to sunny San Diego this winter with us, where (micro) chips and (electronic) games are made, as we discuss the hottest topics in Cyber Law. Boston September 8-10 for the Business Law Section Annual Meeting will be fun too, and our committee will be sponsoring a number of CLE panels to go with the committee, subcommittee and task for meetings. More information is below and watch this space as we fill in the details in upcoming newsletters.

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

BLS Annual Meeting - September 8-10

[Registration](#) is open for the Business Law Section Annual Meeting in Boston. The Cyberspace Law Committee will have a full day of committee/subcommittee meetings on Thursday, September 8. We also anticipate sponsoring a number of CLE programs on the following topics: D&O liability in cyber incidents, litigating data breaches, updates on virtual reality legal issues, the government's role in a cyber incident, liability related to connected devices, and using blockchain in a B2B environment. Early-bird rates still apply, so secure your registration [now](#). And keep your eyes open for the announcement about the Cyberspace Law dinner planned for September 8 at [Summer Shack](#) - a fun seafood joint run by Jasper White, a James Beard award-winning chef who believes great food doesn't need to be "haute"!

Uber's Troublesome Landing in Argentina

By Diego Fernández

Very recently, Uber announced that it was opening for business in Argentina. In those circumstances, Uber's app was available to Argentine users for some days, until it met different barriers which aimed to put it off the market.

First, the Federal District's Taxi Drivers Union, together with four other related associations, filed a protective class action based on an alleged arbitrary omission of the local government to exercise its police power, which requested that Uber be prevented from offering transport services within the limits of the City of Buenos Aires.

In that connection, the union sought an injunction to: (i) order the local

government to take all necessary measures to suspend Uber's activities - whether carried out by itself or by associated drivers- in connection with the provision of passenger transport services without complying with the local Traffic and Transport Code's regulations; and (ii) order the offer of Uber's mobile apps for the City of Buenos Aires to cease.

The court partly granted the injunction and ordered the local government to suspend any activity that Uber or its associated drivers may perform within the City (with an obligation to inform within a 5-day term all measures implemented). It dismissed the petition to order the cease in the offer of Uber's mobile app (First Instance Court on Contentious, Administrative and Tax Matters No. 15 of the City of Buenos Aires, "Federal District's Taxi Drivers Union v. Government of the City of Buenos Aires", decision dated April 13, 2016).

In addition, another action against Uber was brought by prosecutors claiming an infringement to the Code of Misdemeanors of the City of Buenos Aires. Specifically, the complaint was based on unauthorized use of public space for lucrative activities. In response, a court ordered the preemptive shut down and blocking of Uber's web site and any digital platforms, apps and any other technical resources employed to provide its services (First Instance Court on Criminal Matters and Misdemeanors No. 16 of the City of Buenos Aires, "John Doe - infringement to Section 83 of the Code of Misdemeanors", decision dated April 22, 2016).

Both orders were clearly insufficient to prevent Uber from providing its car sharing services in Buenos Aires, particularly in the case of users who had already downloaded the mobile app.

Therefore, and as a result of this fact, the prosecutors pursuing the misdemeanor charge requested the court to issue a new decision ordering all electronic payment processors with business in Argentina, including all major credit cards companies, to refrain from processing any payments in connection with Uber's services.

The court accepted the petition and ordered credit card companies, including American Express, MasterCard and Visa among others, to refrain from performing any activity that would allow Uber to process payment for its services (First Instance Court on Criminal Matters and Misdemeanors No. 16 of the City of Buenos Aires, "John Doe - infringement to Section 83 of the Code of Misdemeanors", decision dated April 28, 2016). The decision was later confirmed on appeal.

Needless to say, this decision has been very effective in preventing Uber from rendering services in the City of Buenos Aires, since the court order attacked the only payment method on which the app runs.

But these were not the only barriers met by Uber. Not surprisingly, the Argentine Data Protection Authority ("DPA") requested information from Uber on their privacy practices in connection with the personal data they are collecting in Argentina, both for the car drivers and the users, and whether any of that data is being transferred to a third country for any purpose.

Note that Argentine Data Protection Law No. 25,326 requires prior, express, informed, written and freely given consent from the data subject in order to treat personal data. At the same time, it forbids the international transfer of personal data to countries which do not provide, at least, the same level of protection that the local law provides. To date, the local DPA has not provided information on whether Uber has provided the requested information.

It remains to be seen how Uber will respond to the different barriers it has found in Argentina, most of which do not seem to be unfamiliar to them, and if they will finally work with the local government, legislature and unions to find some understanding that will allow them to provide their services under certain acceptable regulations.

Diego Fernández is a Senior Associate at Marval, O'Farrell & Mairal in Argentina. He is an ABA Member, Co-Chair of the Argentine Chapter of IAPP, and Board Member and vice-Chair of the South America Committee of

ITechLaw.

EU Ministers Call for Harmonized Data Flows Within the EU

By Robert Bond

Recently ministers from many of the EU member states including the UK and Ireland urged the European Commission to remove regulatory and non-regulatory barriers in the digital single market particularly as regards data protection, telecommunications, and e-privacy.

As regards data transfers, whilst transfers relating to personal data are allowed within the EU, in reality there are still local restrictions that impact the digital economy. In their letter to the European Commission the ministers said, "it should be ensured that data can move freely across borders, both within and outside the EU, by removing all unjustified barriers to the free flow of data and that regulation does not constitute a barrier to development and adoption of innovative data-driven technologies." The ministers also said, "in the long run we strive to remove the most significant barriers to cross border e-commerce through common rules on consumer protection at a high level with aligned consumer rights online and offline. Action on e-government including EU-level information exchange and cross-border services can significantly reduce friction and administrative burdens."

On May 18, research into examples of cross-border restrictions on data flows in which Charles Russell Speechlys were a key contributor were presented to the European Commission at an interactive workshop. We are carrying out further research in this area with our partner London Economics as part of an EU funded research project. For further information please contact [Robert Bond](#).

Russian Strategy for Data Protection

By Robert Bond

The Russian Data Protection Authority ("Roscomnadzor") announced this spring its strategy towards data protection which will impact businesses with operations in Russia.

Roscomnadzor has reported that many businesses do not have satisfactory compliance programs in place nor sufficient resources to ensure compliance with the law. Particular concerns regarded the violation of the data minimisation principle and the lack of response to subject access requests as well as a lack of knowledge by data subjects as to their rights.

As Roscomnadzor develops their data protection strategy it is likely that legislation will be introduced to increase enforcements and fines as well as education for data subjects of their rights and sweeps of websites and processing activities by particular sectors such as banking, insurance, media and tourism.

Committee Doings

From the Enterprise Technology Subcommittee

Co-chairs Candace Jones and Cheryl Burtzel

The Enterprise Technology Subcommittee continues its work on the **Contracting with Vendors for Information Security and Resiliency** project. We have conducted well-attended workshop conference calls to date, focusing for now on the liability concerns associated with enterprise technology contracting. Participants have included lawyers representing entities procuring enterprise

technology solutions as well as vendors. We appreciate the energetic exchanges and insights provided by these participants. The survey of regulatory requirements governing cybersecurity has been proceeding as well.

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. 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.

These conference calls occur every two weeks at **noon Eastern Time on the first and third Thursday of each month**. Our next call is planned for **Thursday, June 16, 2016 at noon Eastern**.

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 Mobile and Connected Devices Subcommittee will present a CLE program at the Business Law Section Annual Meeting in Boston. The program, tentatively titled "Making and Deploying Devices that Connect to the Internet Without Connecting to a Lawsuit," is scheduled for September 9. The program will address the potential liability of manufacturers and users of connected devices that have security vulnerabilities which contribute to the exposure of sensitive information. John Rothchild will serve as program chair, and the list of participants is being formed now.

From the Electronic Contracting Subcommittee

Chair Juliet Moringiello

How is the law evolving with respect to modifications of online contracts? Juliet Moringiello and John Ottaviani discuss the subcommittee's research and make some preliminary recommendations in "Online Contracts: We May Modify These Terms at any Time, Right?" The article is part of the May Cyberspace mini-theme in Business Law Today, and you can find the article at <http://www.americanbar.org/publications/blt/2016/05.html>

There's still lots more work to be done, and the subcommittee would like to expand this work into a Business Lawyer article, so let Juliet know (jmmoringiello@widener.edu) if you're interested in pitching in.

From the Non-US Cyber Laws Subcommittee

Chair Robert Bond

Our objective is to map international laws and regulations that impact US corporations. We have developed a resource that cover topics such as data retention, anti-bribery, e-marketing, data breaches and data privacy.

We cover around 40 countries including Europe, Israel, Asia and Latin America.

We are always looking for volunteers to help keep the information up to date. The resource is currently available to members of the sub-committee and in due course we hope to make it available to Business Law Section as an online tool.

We plan to review this project at the meeting in Boston.

Member News

The most recent draft of the Uniform Regulation of Virtual Currency Business Act will be available on the <http://www.uniformlaws.org> website by the time this

newsletter is in print. CLC has significant representation in this drafting project with Sarah Jane Hughes as Reporter, Steve Middlebrook as the ABA Advisor, Richard Field as the ALI Advisor, and Stephanie Heller as an Observer. An issues memo accompanies this new draft, which will be read in part at the 2016 Annual Meeting of the ULC in Stowe, Vermont in July. The next Drafting Committee meeting is scheduled for late October 2016 at a location TBA.

What do Bitcoin, marijuana, and social media accounts have in common? Well, maybe you use Bitcoin to buy pot advertised on some social media account. But for Business Law Section purposes, the bankruptcy treatment of all three is unclear. Good thing that the Cyberspace Committee has people who can provide some clarity on two of them (not pot). Steve Middlebrook and Juliet Moringiello participated on a panel at the Business Bankruptcy Brunch at the Business Law Section Spring Meeting in Montréal, in which they described the issues raised by crypto currencies (Steve) and social media accounts and other brand assets (Juliet) in bankruptcy cases.

Robert Bond is currently involved in two international projects:

1. Participating in an EU funded research project into restrictions on cross border data flows within the EU member states in order to help the European Commission identify barriers to the digital economy and to online innovation within the EU.
2. Member of the United Nations Global Pulse Privacy Advisory Group, developing rules and policies for use in UN big data research for humanitarian needs. Other participants include privacy regulators and privacy academics from around the world.

Upcoming Programs of Interest

[Yourbrandsucks.com: A Primer on Gripe Sites and How to Deal with Them](#)

June 10, 2016

Format: Webinar

[What You Need to Know About the New Defend Trade Secrets Act](#)

June 15, 2016

Format: Webinar

[HIPAA, Privacy and Security Fundamentals](#)

June 16, 2016

Format: Webinar

[Rise of Big Data Solutions in Hiring](#)

June 21, 2016

Format: Webinar

[Legal Issues and Litigation Relating to the Use of Unmanned Aircraft Systems/Drones](#)

June 29, 2016

Format: Webinar

[Theft or Art?: Protecting Pictures and Images Online](#)

July 7, 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](#).

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