



October 2016

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## Important Dates

[Business Law Section Spring Meeting](#)

April 6-8, 2017  
New Orleans, LA

## Editorial Board

[Lois Mermelstein](#)

## Message from the Chair

We enter a busy time for the Cyberspace Law Committee. Coming off a successful BLS Annual Meeting in Boston last month, the time is short for proposals to present topics at our Winter Working Meeting in San Diego. We need to see your proposals by October 21. In other words, the best way for you to convince your law firm or boss to send you to San Diego in the middle of the Winter (January 27-28), is to explain that you need to go because you have been selected as a speaker at the conference. Be practical. Be creative. Come up with an interesting short topic for a half hour or 45 minute talk, and propose it. The entire audience will be cyberlawyers, so feel free to stretch into new technologies and speculative legal theories. We will be interested.

Enjoy your October and feel free to write or call me with questions.

Ted Claypoole  
Chair, Cyberspace Law Committee

## BLS Spring Meeting Plans

The Cyberspace Law Committee is already gearing up for the BLS Section Spring Meeting in New Orleans, April 6-8, 2017. We thank you for the many excellent program proposals. In conjunction with a Section initiative and given that our subcommittee chairs often arrange for some excellent presentations as part of their meetings, we will offer three CLE programs within our scheduled subcommittee times. In addition, we will have a couple of stand-alone CLE programs. At this point, we anticipate offering programs on the following topics:

- Celebrity use of social media and paid endorsements
- Enforcement and litigation trends in privacy and data security
- Report on the ULC's draft Uniform Regulation of Virtual Currency Business Act
- EU privacy shield impact on data transfer from mobile devices
- Changing standards of unfairness as seen in recent enforcement CFPB actions

[Registration is open](#) for the meeting, so take advantage of the early bird discount and register now.

## Cyberspace Winter Working Meeting

Are you looking forward to a winter escape where you also can take advantage of some cutting-edge CLE and networking with the best group of lawyers around? Then mark your calendars for the Cyberspace Law Institute and Winter Working Meeting, January 27-28, 2017 in San Diego. We have received some excellent CLE program proposals and are looking for a few more. Most CLE programs are 30-45 minutes long with just one or two speakers. Please let us know if you have an idea. And look for an announcement soon about the opening of registration.

## The IANA Transition - Y2K All over again?

*From the Internet Governance Task Force  
Co-Chairs David Satola and Michael Kelly*

Did the Internet fail over the weekend? October 1, 2016 saw an historic Internet event - the "IANA Transition". Or was it a non-event? Actually, the "transition" consisted mainly of the expiration of a contract, the "Affirmation of Commitments" between NTIA and ICANN/IANA.

But one would have thought, from what some detractors of the "event" were saying (for example, on the eve of the transition, Attorneys General of four states "sued" to prevent it from happening (<http://www.politico.com/story/2016/09/state-ags-sue-to-stop-internet-transition-228893>), this following an attempt (and failure) by Senator Ted Cruz of Texas to tack on a rider to the omnibus budget bill recently passed by Congress to stop the transition), that the globe was facing a catastrophic event on the scale of Y2K! Maybe it was...

IANA is a part of ICANN that has certain responsibilities over certain technical matters affecting the Internet (e.g., numbering, protocol assignment and the DNS - admittedly pretty important stuff). IANA had been supervised by the U.S. Department of Commerce's NTIA via a series of agreements that, over the years since 1998, have been less and less onerous. Under a plan announced nearly two years ago, the NTIA said it would transition its oversight (what was left of it) to "the 'multi-stakeholder' community" as long as certain conditions regarding the continuing safety and stability of the Internet were met. NTIA announced in August that things were on track, even though they had been delayed by almost a year.

The good news is that, like the news that emerged after Y2K, the Internet did not collapse. That said, existing concerns about freedom of speech on line, transparency and cybersecurity on the Internet - concerns that existed even when the NTIA agreement was in place - will persist and require on-going vigilance.

## Committee Doings

### **From the Mobile and Connected Devices Subcommittee**

*Co-chairs Richard Balough and John Rothchild*

If we can secure bank transactions, then why can't we have a secure election system? The answer, according to Bruce Schneier, an internationally renowned security analyst, is that votes are secret with no verification or audit trail. Schneier told the Mobile and Connected Devices subcommittee during the Business Law Section annual meeting in Boston that there needs to be some form of paper backup to ensure the integrity of the coming presidential election. But he admitted that the system cannot be changed before November. He suggested that lawyers work with technology experts to determine in advance how votes will be counted in the event of a hack or even the appearance of an attack. If no system is in place before the election, he said it would be too late afterwards to reach an agreement and protect the integrity of the election. If there are no hitches in this election, he recommended it could happen in the future, so lawyers and technologists should not ignore the issue.

### **From the International Trade Subcommittee**

*Co-Chairs John Rothchild and Hal Burman*

The International Trade subcommittee considers global and regional legal initiatives affecting electronic commerce, broadly defined, including UNCITRAL,

UNCTAD, the EU, and others.

In Boston, the group held two meetings.

In the first meeting, we reviewed the potential for provisions on electronic commerce in international trade agreements as a method of harmonization of the law in the area, as distinct from using treaties dealing exclusively with the topic. The recent (and unratified) Trans-Pacific Partnership (TPP) had a chapter of engagements on e-commerce.

Generally speaking, the trade negotiators are not experts on e-commerce and might be willing to consider suggestions for improvement of the focus or contents of the agreements. The TPP chapter was fairly uncontroversial - member states should ensure they have an accepting legal framework for the effective use of e-communications and not discriminate against cross-border communications. On points of substance like anti-spam laws and privacy rules, the engagements were at a high level.

In the second meeting we considered the upcoming work of UNCITRAL on identity management, to be considered in a preliminary way at the November 2016 meeting of the Working Group on Electronic Commerce. What was the role of the US or like-minded countries at this stage? It seemed likely that UNCITRAL could start from the basis of the EU regulation, since it was in place. Was that acceptable to American interests? Were there ways to focus or qualify it to work better? It was generally admitted in the meeting that it would be more effective to have a vision of what might be wanted, rather than simply to criticize others' proposals without a view of what else might be done.

In particular, is it time to accept some modification of the long-standing tradition in the US and at UNCITRAL of technology neutrality? Could identification be properly managed internationally on that basis?

What are business interests in the topic - we ask as part of the Section of Business Law. Perhaps the scope of party autonomy in a system of international recognition could attract our attention.

These topics may be the subject of conference calls during the autumn. Anyone with ideas to contribute or a willingness to help out, or who just wants to listen in, should join the subcommittee's mailing list (through the web page) and contact the co-chairs.

#### **From the Current Law Task Force**

*Chair John Black*

The next teleconference for the Current Law Taskforce will be held on **Wednesday, October 19, 2016, at noon Eastern Time**. Taskforce members are asked to watch for changes in cyberspace law, such as significant new cases, regulatory prosecutions, rulings, and statutes or regulations that affect the business of cyberspace, data, or the digital world, and share those developments on the teleconference. Our goal is to choose at least one topic to write upon every meeting and assign a writer to draft a few paragraphs for inclusion in the newsletter and on the website. Topics of sufficient interest may be developed into a webinar or BLT article.

Our calls occur every other month at **12:00 Eastern Time** on the third Wednesday of the month. An email reminder will be sent with call-in instructions before the meeting. If you are interested in participating in the next call, please register on the website or email your contact information to John Black, [jblack@skarzynski.com](mailto:jblack@skarzynski.com), to be included in the listserv notice for call-in details.

#### **Other News**

The Research Handbook on Electronic Commerce Law, edited by the committee's own John Rothchild, has just been published. Several members of the Cyberspace Committee, including John, Sarah Jane Hughes, Steve Middlebrook, Chris Kunz, Ed Morse, Jane Winn, and Juliet Moringiello, contributed chapters. More information on the book is at: <http://www.e-elgar.com/shop/research-handbook-on-electronic-commerce-law>.

On Thursday, October 6<sup>th</sup>, Stephen Chow and Sarah Jane Hughes are among the speakers at the New England School of Law's biennial conference on developments in commercial law. Their session closes the day beginning at 4 pm. Among the topics are cross-border payments, virtual currency's role in them, and a service known as Transferwise.

Lisa R. Lifshitz's latest piece for Canadian Lawyer covers lessons learned from the Ashley Madison hack. It's available at: <http://canadianlawyermag.com/6181/Buyer-beware-.-.-Lessons-learned-from-the-Ashley-Madison-hack.html>.

## Programs of Interest

### [Emerging Issues in Global Digital Currency Payments](#)

Date: October 25, 2016

Location: Webinar

*Featuring the committee's own Sarah Jane Hughes.*

### [Drones and UAS: Regulatory Update and What's Next on the Horizon for Users and Owners](#)

Date: October 26, 2016

Location: 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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