



May 2017

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September 14-16, 2017
Chicago, IL

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Message from the Chair

We need your proposals for presentations in Chicago next fall at the ABA Business Law Section Annual Meeting. What topics interest you? Are we all prepared for the new European privacy rules? Are the old ones working for U.S. business? Is there more to financial technology in 2017 than blockchain? Will the change in administration affect regulation of U.S. cyberbusiness? Is cyberinsurance necessary? How have cloud contracts evolved to support customer needs? Pull together a talk or a panel discussion and advance legal thinking. We need the proposals before the end of April.

The Spring Meeting in New Orleans went well, with several excellent meetings and CLEs and a terrific creole dinner at Mother's restaurant. The Section Dinner included a ride around the Crescent City on Mardi Gras floats.

Two of our committee's books are nearly ready for publication, so keep an eye out for the release of *Social Media Law*, edited by Val Surgenor and John Isaza, and for *Cyberspace Due Diligence in M & A Transactions*, edited by Tom Smedinghoff and Roland Trope. Both should be released by the Business Law Section this spring or summer. And what about you? Is there a cyberspace legal book that is welling up inside you? Let us know. We can release it together.

Ted Claypoole
Chair, Cyberspace Law Committee

Call for Program Proposals - BLS Annual Meeting, September 14-16

Planning is underway for the Business Law Section Annual Meeting, which will take place September 14-16, 2017, in Chicago. The Cyberspace Law Committee has always produced excellent CLE programming for the spring and annual meetings, and we look forward to doing the same this fall with your help. Please provide your **CLE Program Proposals by Monday, May 15, 2017**. Please send them to Committee Chair [Ted Claypoole](#), Incoming Chair [Cheryl Balough](#) and Program Chair [Cheryl Burtzel](#). Your leadership team will review your submitted proposals and, depending on number received and any overlap, will submit program proposals to the ABA as a group. Please do NOT submit your proposals to the ABA meeting planners directly for now, despite what the form says.

For each proposal, please provide us with:

- A proposed program title
- Three (3) key topics the program will cover
- How long the program should last-60, 90, or 120 minutes
- Which other BLS committees will (or should) co-sponsor the program
- Your thoughts about prospective panelists (can be by position rather than name-for example, in-house counsel from a company or UCC professor)
- If you would like the program to be presented as part (or in lieu) of a subcommittee meeting.

As you put together your proposals, keep in mind that the audience is business

attorneys. Because a variety of attorneys attend this meeting, there is demand both for niche programs targeting more experienced lawyers with focused practice areas and for basic-level programs.

Answers to some frequently asked questions:

- Do panelists have to register for the meeting? *Yes, although fee waivers and travel expense reimbursements may be granted to two panelists per program.*
- Do panelists have to have PowerPoints or other materials? *Each panel needs to have original materials so that the program can offer CLE. More specific details on the program materials to come.*
- Are there requirements for the types of panelists? *BLS is committed to diversity, and each panel should have at least one lawyer speaker who is of color, female, with a disability, young, or identifying as gay, lesbian, bisexual, or transgender. You do not need to identify diversity at this point in the process.*
- Is the program proposal deadline firm? *Yes. Cyberspace Committee leadership needs to review all proposals beginning May 15, back to you with any questions, and then submit selected proposals that week to BLS leadership. BLS Leadership then will allocate space and programs for the Annual Meeting agenda. **Therefore, we must have your proposals NO LATER THAN May 15.***
- When do I need to have the final program put together? *If your proposal is accepted by BLS, you will need to submit a more detailed program information form with meeting description and speaker information by June 30, 2017 and then program materials and speaker releases are due **NO LATER THAN August 4, 2017.** More details, along with specific deadlines and appropriate forms, to follow should your program be selected for presentation at the Annual Meeting.*

We look forward to receiving your proposals for CLE programs to be sponsored by Cyberspace Law Committee at 2017 BLS Annual Meeting. If you have any questions, please contact Ted Claypoole (tclaypoole@wcsr.com), Cheryl Balough (cbalough@balough.com) or Cheryl Burtzel (cburtzel@dwmrlaw.com). Thanks very much.

Business Law Today Call for Editors

The Business Law Section is excited to be working on the complete re-design of our publication, *Business Law Today*. The new publication will reflect emerging trends in the digital and publishing industry-and respond to evolving member preferences. Our new, custom website will cater to individual content preferences, and make our content more findable.

New Positions

Our new editorial strategy will deliver increasing value to members through a regular rhythm of leading content across eight defined practice areas.

We are currently recruiting for 16 talented individuals to serve as editors for our [eight practice areas](#):

- **Executive Editor:** creates the editorial calendar for the practice area which will include articles, video, tools and a month-in-brief
- **Managing Editor:** oversees content development (author, peer review, etc.) for the practice area

Position Benefits

The focused nature of these roles - and visibility of the publication - offer our new Editors the ability to:

- influence on the conversation and development of the law in your practice area
- engage with the top leaders in your practice area
- increase your profile and visibility in the marketplace

I hope you will consider applying for these visible and influential leadership positions.

Chris Rockers, Chair-elect, Business Law Section

Subcommittee News

From the Mobile and Connected Devices Subcommittee

Co-chairs Richard Balough and John Rothchild

Business lawyers need to keep a close eye on what is happening in the United States and the European Union if their clients transfer personal data with EU countries because it appears the EU-US Privacy Shield has been shattered by current events.

The Privacy Shield was to replace the "Safe Harbor," which was invalidated by the European Court of Justice. However, after Brexit and the election of President Trump, it appears the Privacy Shield is dead, according to a panel presentation at the Business Law Section Spring Meeting.

David Flint, Valerie Surgenor, and Daniel Alvarez agreed that the landscape regarding data protection for US-EU transactions changes nearly daily. As a result, there is no assurance that past practices on the handling of personal data in the EU will be sufficient in the future. This creates problems especially because mobile devices share a vast amount of personal data, which is subject to protection in the EU.

The panelists suggested that clients review what data is being transmitted, what data is being stored, and ask if the data really needs to be collected or stored. If the answer is no, then the client's data collection and retention policy should be modified.

The panel presentation was sponsored by the Mobile and Connected Devices Subcommittee of the Cyberspace Law Committee. Richard C. Balough chaired the panel.

From the ~~Legal Analytics Joint Working Group~~ Legal Analytics Committee

Chair Warren Agin

The Legal Analytics Joint Working Group is now the Legal Analytics Committee! After its inaugural year as a joint subcommittee of ten different committees, including the Cyberspace Law Committee, the Section's Council voted to make LAWG a full committee, on a provisional basis. We are very grateful to the Cyberspace Law Committee for all of its support over the past year, and look forward to working with Cyberspace on many interesting projects in the future.

Warren Agin, Chair
Legal Analytics Committee

From the Health IT Task Force

Co-chairs Dina Ross and Valerie Surgenor

The Cyberspace Law Committee's newest task force got off to a great start. The

inaugural meeting, held at the Section's spring meeting, saw a number of interested participants from across the Business Law Section come together to explore the intersection of healthcare IT, security, privacy, and related regulatory and business matters as healthcare enters the IoT age. We started planning for a presentation at the Section's Annual Meeting in Chicago. Our first order of business: what to do about your fridge taking action against you when it thinks you're gaining weight. Stay tuned.

From the Electronic Contracting Subcommittee

Chair Juliet Moringiello

The Electronic Contracting Subcommittee met at the Spring Meeting and discussed the most recent draft of the American Law Institute's Restatement of the Law of Consumer Contracts. Prof. Amy Boss, a member of the ALI Council, led the discussion and recommended that the members of the Cyberspace Committee take a look at the draft, particularly the provisions that address formation of contracts electronically.

We discussed our outline for our new publication, the Electronic Contracting Deskbook. We are hoping to submit a proposal to the Business Law Section Publications Board by the Annual Meeting. WE ARE LOOKING FOR MORE VOLUNTEERS! If you have any interest in contributing to the Cyberspace Committee's work on the formation and modification of electronic contracts, please contact Juliet Moringiello at jmmoringiello@widener.edu.

From the Cybersecurity Subcommittee

Co-chairs Roland L. Trope and Tom Smedinghoff

In June 2017, the ABA Business Section will publish the product of the subcommittee, *A Guide to Cybersecurity Due Diligence in M&A Transactions*, edited by Thomas J. Smedinghoff and Roland L. Trope.

From the Enterprise Technology Subcommittee

Co-chairs Cheryl Burtzel and Candace Jones

The Enterprise Technology Subcommittee used its time in New Orleans to look forward and discuss adding to our portfolio of work on topics that interest business lawyers supporting enterprise technology. Open discussion suggested two potential new areas of work: "industry standard" and data governance. We all encounter from time to time provisions that require performance according to "industry standards," but what does that mean in the enterprise technology space? We are considering whether this question presents a project or program opportunity - possibly a primer or glossary of standards commonly cited as measures of performance and the opportunities and pitfalls for referencing them.

The group also sees data and the need to support enterprises tackle data "governance" as topics in which lawyers can have important roles in their organizations. What roles do or should lawyers have? Is there an opportunity for the Subcommittee to help answer these questions?

We would appreciate hearing from you about the relevance of these topics to your practice and as potential Subcommittee projects.

In the meantime, Cheryl and Candace are working with several Subcommittee volunteers to complete commentary about cybersecurity and vendor relationships. They are also reorganizing the contributions of Subcommittee members for the cybersecurity clauses project.

Cheryl Burtzel (cburtzel@dwmlaw.com) and Candace Jones (candace.jones@ny.frb.org)

From the International Trade Subcommittee

Co-chairs Hal Burman and John Gregory

Following New Orleans, the ITS will hold one more conference call before deciding on recommendations for the upcoming Uncitral Working Group IV meeting on e-commerce. The Subcommittee will then in May review the projected scope of work on both identity management and cloud computing.

In May, the subcommittee also plans to return to issues surrounding whether to support e-commerce provisions in future efforts to negotiate trade or other economic agreements.

And, if volunteer resources permit (we would welcome younger members of Cyberspace), we expect to ramp up the review of e-commerce activities at a number of international bodies, including multilateral bodies - UNECE, WTO, UNCTAD, ITU, plus regional bodies such as OHADA and SADC in Southern Africa and ASEAN and APEC in the Asia-Pacific region.

Those interested should contact co-chairs Hal Burman or John Gregory at Halburman@Aol.com and John@Euclid.CA

Committee Members Out and About

A fresh draft of the Uniform Regulation of Virtual Currency Business Act is posted on the ULC's website, www.uniformlaws.org. Many CLC members have expressed interest in this project. The next steps include a public comment period open until May 4, 2017, after which the draft to be "read" at the ULC's Annual meeting for purposes of approval will be crafted and distributed. The ULC meeting is in mid-July, but has limited seating for members of the public. Steve Middlebrook, ABA Advisor, Sarah Jane Hughes, Reporter, and Juliet Moringiello, Commissioner from Pennsylvania, will be the CLC go-to people for this project. Keith Rowley from Nevada also will be present. In the meantime, if you are interested in virtual currencies, please take a look at the draft. Comments should be addressed to the ULC via katie.robinson@uniformlaws.org. Steve Middlebrook, the ABA Advisor for this project, can be reached at stm@aol.com until May 1 when he officially joins Womble Carlyle. Sarah Jane can be reached at sjhughes@indiana.edu.

Professor Sarah Jane Hughes and Roland Trope will be speaking on a CLE program at the ABA Section on International Law on Friday, April 28th in Washington, DC. The topic is: *The New Realities of Dealing with Iran: What Has and Has Not Changed Since Implementation Day*. The panelists will look at the Iran Deal one year after implementation and discuss traps for the unwary still left in U.S. economic sanctions that remain in place. Other panel members are from Freshfields, DLA Piper, HSBC, and General Electric.

On March 29, Sarah Jane Hughes I gave an interview to Evan Weinberger of Law 360 on the SCOTUS' decision that day on New York's statute regulating the imposition of credit card surcharges, and whether as applied the statute is unconstitutional as a limitation on commercial free speech or a regulation of conduct. The decision is *Expressions Hair Design v. Schneiderman*, No. 15-1391. Steve Middlebrook and Sarah Jane have included the lower court decisions re this litigation in at least two Cyberspace Survey articles.

This fall, Cyberspace member Warren E. Agin will be teaching a course called "Legal Analytics: Applying Data and Analytic Thought to Legal Problems" at Boston College Law School.

Other Programs of Interest

International Identity Management Law and Policy Meeting

The Identity Management Legal Task Force, in conjunction with The World Bank and the Open Identity Exchange, will be holding an International Identity Management Law and Policy meeting on **May 18, 2017**. The meeting will focus in part on the issues being raised in the discussions regarding identity management legislation at the United Nations Commission on International Trade Law (UNCITRAL) and the Uniform Law Commission Study Committee on Identity Management in Electronic Commerce. The full-day meeting will be held at the World Bank in Washington DC. Please contact Tom Smedinghoff at Tom.Smedinghoff@lockelord.com to register or for further information.

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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