



June 2017

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[Business Law Section Annual  
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September 14-16, 2017  
Chicago, IL

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## Message from the Chair

Projects. We can help your career by facilitating your legal passion projects. Write for us, and we can help your work be published. Plan for us and we can provide an interested audience for your panel or solo discussion. Develop a crazy practice idea and we can find a way for it to reach lawyers who will care - lawyers who will appreciate your thought and your effort.

Last month we congratulated former Cyberspace Committee Chair Jon Rubens on his new role as the editor-in-chief of Business Law Today. We have subsequently learned that two of our most outstanding committee members, Prof. Juliet Moringiello and Sara Beth Kohut will be editing the Internet Law and Cybersecurity practice area for BLT. They are looking for material from all of you. Long articles, short articles, notes, tomes - they need them all. Repurpose your client alerts. Touch up a memo you wrote for your senior partner, and sent it to us. We need to show the rest of the BLT how an industry-focused publication can explode with relevant information from a variety of sources.

And any other project you have in mind, bring it to us. For quality work, we can always find an audience and extend the reach of your good work. From book projects to practical checklists to 500-word blurbs on the latest cases - we will make you a star.

Ted Claypoole  
Chair, Cyberspace Law Committee

## 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.

We have submitted the following program proposals:

- Medical Technology in the IoT Age: What the Business Lawyer Needs to Know (Ross/Surgenor)
- Avoiding the Next Yahoo!/Verizon: Cyber Security Due Diligence in M&A Deals (Smedinghoff)
- Blockchain and Beyond: What are Smart Contracts and How Will They Change Our Thoughts About Contract Law? (Chair: Moringiello) (in lieu of E-contracting TF Meeting)
- Vendor Risk-The Weakest Link in Your Cyber Security Strategy? (Denny)
- Connected Cars, Cyber Security, and CFIUS (Trobe)
- Intelligent Eavesdropping: Legal Issues Raised by Digital Personal Assistants and Artificial Intelligence Devices Connected to the Internet of Things (Boughman)

While we wait to hear about program approvals, it's not too soon to check out the meeting [website](#). You can also save \$100 by registering now!

## Technology And The New Face Of Brazilian Democracy

*By Renato Opice Blum*

The Constitution of the Federative Republic of Brazil, enacted in 1988, provides that "all power comes from the people, who exercise it by means of elected representatives". On the constitutional instruments concerning the subject matter, it is clear that the representative democracy is the government model adopted by the country, gaining effectiveness through universal suffrage.

According to the constitutional text, however, there are restricted forms of direct participation of the people: plebiscite, referendum or popular initiative (art. 14-CF). It is impossible not to realize that there are so many bureaucratic obstacles for exercising such modalities of participation that these institutes become notoriously distant from daily national life.

Well, for several years the Brazilian citizen took comfort from the sophism that the electoral process was his only chance of involvement with politics. The responsibility of each elector was limited to the choice of a representative that would decide for him, from there on, all the guidelines that the given federal entity would take. In practice, the vast majority of the population's role ended with the confirmation of its vote at the polls.

In recent years, however, the implementation of technology in Brazil, the growing digital inclusion and notably the spread of social media allowed the individual to widen his participation in the political life of the country, resuming the strength that should never have been relinquished. After all, the Magna Carta has always guaranteed the freedom of expression of thought (section IV, art. 5-CF), including political, evidently within the limits of the law.

One can imagine that perchance the sleepiness of some people for political affairs has been on account of the absence of mechanisms to give scale to their opinions, enabling the rapprochement among people of the most distant points of the vast national territory. This need was met with the advent of the Internet.

In fact, besides the possibility of social mobilization that recently has been gaining strength, the network began offering instruments of supervision of work of the three branches of government. These gradually are driven to the consolidation of the Electronic Government, opening up channels previously inaccessible to the common citizen.

On the other hand, popular pressures culminated in the adoption of a legislation for access to public information (Law No. 12,527/2011). This law formalized that the State must ensure the efficient access to information through objective and agile procedures, in transparent, clear and easy-to-understand language. In addition, to fulfill their goals, it should be used all the rightful means and instruments at the disposal of organs and public entities, being mandatory "the disclosure in official sites of world wide web (internet)".

The Complementary Law No. 131/2009, in turn, has also consigned to be compulsory to the transparency on public finances, so that today, for the joint application of the two aforementioned laws, it is possible to find on the Web official information about the public accounts, wage sheets of servers, signings, among others. That is, the technology not only made it easily possible to obtain important information, but also allowed Brazilian citizens to conceive their critical opinion on said data and could break it, allying themselves ideologically to other people interested in the subject matter.

In this connection, the crucial approval of the Brazilian Civil Rights Framework for the Internet (Law No. 12,965/2014), crowned the understandings on the subject matter, making it official that the Internet is the essential tool for the exercise of

citizenship (art. 2, subsection II, art. 7).

Accordingly, apps for reviewing the performance of rulers and legislators have been created. The modernization of public administration, following up the proper use of public money, has also been envisioned. The ease of examination of proposals for legislation and structural reforms, in particular, gained emphasis with effective electronic media.

Even traditional media seems to have lost the monopoly on the communication, with the remarkable insurgency of popular or civic journalism, stationed mainly in street demonstrations and massive audience on Internet. The approach of these non-professional vehicles (with the obvious exception to hazards and abuses of fake news) contributes in a healthy way to the references of individuals to the extent they bring to the Internet content near the factual reality, with no sponsors' filters and with diverse forms of narrative.

However, it is worth noting that, regardless the required breaking feature of this virtual democracy, there are limits imposed by the Brazilian laws that provide liability, including criminal in nature, of the excesses. Suppression to crimes of denigration, slander or defamation (Art. 138-140 of the Criminal Code) committed on the Internet and under any pretext are still in force, with concrete possibility of increased penalty when such practices are aimed against the President of the Republic, head of foreign government or public official by reason of their positions (Art. 141 of the Penal Code).

Similarly, incitement to commit or apology to crime (Arts. 286 and 287-CP), related to damage, for example, (compounded when practiced against the public patrimony) are also unacceptable conduct and punished by law, such as the socially rejected corruption crimes.

Therefore, for purposes of healthy using of digital channels in the exercise of popular sovereignty, the informational and educational processes are essential so that the citizen can exercise with fullness their rights and contribute in a legitimate way to the growth of the nation, as well noted by the Brazilian Civil Rights Framework for the Internet (Art. 26).

Finally, if the old saying that teaches "knowledge is power" is worthy, it is understood that today the technology has been helping in the empowerment process of the Brazilian citizen. Gradually, with access to education and real possibility of supervision of rulers, the power that "came from the people", but would slip from their hands, is being resumed in a balanced and absolutely interesting way for the country.

*Renato Opice Blum has a Master's Degree from Florida Christian University. He is an attorney and economist, and the Coordinator of a Digital Law course at INSPER.*

## Subcommittee News

### From the Current Law Task Force

*Chair John Black*

The Current Law Task Force will hold a teleconference call to discuss recent cyberspace law developments on Wednesday, June 14, 2016, at 11 am Central Time/noon Eastern Time. Please be on the lookout for new cases, laws or rulings that affect cyberspace, data, and the digital world to discuss during our call. The Taskforce offers a terrific opportunity for Committee members to publish short articles on emerging cyberspace topics in the monthly newsletter and Business Law Today and organize cutting edge topics for webinars or panel presentations.

An email reminder will be sent with call-in instructions a week before the next meeting. If you are interested in participating, 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.

#### **From the Internet Governance Task Force**

*Co-Chairs Mike Kelly and David Satola*

At the end of May 2017, the FCC voted to move forward with a notice of proposed rule-making (NPRM) repealing the Obama-era net neutrality rules for Internet service providers (ISPs), opening an initial 90-day comment period (due to close on 17 July). The 2015 rules ensured that Internet users could access all content and services without interference from their ISP. While access to content is likely guarded by free speech constitutional protections, the service concern is not. And the largest aspect of that concern is speed. ISPs would like to charge their users premiums for faster Internet speed - effectively creating levels of access to the Internet with different price points. The Open Internet rules (sometimes called "net neutrality") prohibited that practice on the premise that everyone should have equal access. A number of media outlets have raised a call to arms in support of retaining the Obama-era rules (see, e.g., <https://www.youtube.com/watch?v=92vuuZt7wak>; and <https://www.theverge.com/platform/amp/2017/5/24/15685414/net-neutrality-fcc-nprm-explained>).

The Internet Governance Task Force would be interested in hearing your views on the NPRM. We'd be particularly interested in whether any members of the Committee know of any other Business Law Committee or ABA Section that intends to file comments during the NPRM comment period. Please reply to Mike Kelly ([Michaelkelly@creighton.edu](mailto:Michaelkelly@creighton.edu)) and David Satola ([dsatola@jhu.edu](mailto:dsatola@jhu.edu)).

#### **From the Identity Management Legal Task Force**

*Chair Tom Smedinghoff*

The Identity Management Legal Task Force held a joint meeting with the World Bank and the Open Identity Exchange (OIX) at the World Bank headquarters in Washington DC on May 18. Approximately 70 people attended the day-long meeting for the purpose of discussing developing identity management legal and policy issues. In addition to representatives from the ABA Task Force, the World Bank, and OIX member companies, attendees also included representatives of the European Commission, the UK Cabinet Office, the U.S. Departments of State, Commerce, and Treasury, the Holy See, the Virginia Identity Management Standards Advisory Council, and the National Association of State CIOs (NASCIO).

Discussions regarding the topic of identity management ranged from legal and policy issues raised by private-sector issuance of digital identity credentials, to issues involved in government issuance of foundational identification credentials, such as national eID cards. We are currently working on preparing a short report to summarize the discussions at the meeting.

### **Committee Members Out and About**

Sarah Jane Hughes is preparing the draft of the Uniform Virtual Currency Business Act for consideration at the Annual Meeting of the Uniform Law Commission in San Diego on July 14-18. The draft will post to the Uniform Law Commission's website and be sent to those who have signed on as Observers to the drafting committee's work. Steve Middlebrook is the ABA Advisor for the project.

## Other Other Programs of Interest

[Second National Institute on Cybersecurity Law](#)

Date: June 22, 2017

Format: In-Person, Chicago

[New ABA Ethics Opinion on Securing Electronic Communications: What Attorneys Need to Know](#)

Date: July 11, 2017

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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