



July 2017

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Important Dates

[Business Law Section Annual Meeting](#)

 September 14-16, 2017
 Chicago, IL

Editorial Board

[Lois Mermelstein](#)

Message from the Chair

Plan to join us in Chicago for the Business Law Section Annual Meeting this year. You can register [here](#). The Cyberspace Law Committee will be hosting our usual set of committee, subcommittee and task force meetings throughout the day on Thursday. Be sure to attend early to witness the arcane, formal, and dramatic processional and ceremony whereby the decades-old Cyberspace Orb of Power is passed to Cheryl Balough, the next generation of Committee leadership (between 9:00 and 9:10 Central Time). Breakfast will be available beforehand in the lobby.

We are sponsoring several CLE panels on cutting edge topics this year, including *Medical Technology in the IoT Age: What the Business Lawyer Needs to Know*, early on Thursday morning, and *Vendor Risk - The Weakest Link in Your Cyber Security Strategy?* later that same day. We also sponsor panels on connected cars, on mart contracts, and on IoT eavesdropping, as well as the presentation on data security in merger and acquisition transactions that promotes the Trope/Smedinghoff book the Section will soon be releasing.

The Committee dinner will be at Cyrano's on the River, an easy walk from the convention hotel.

Of course, meetings are not our only opportunity. We can help you publish short articles, law review articles, or even books or book chapters. Just let us know what you are interested in writing about, or send us what you have written, and we can introduce you to the right editors to publish with the Business Law Section. Your writing will be placed in front of 50,000 business lawyers.

Ted Claypoole
 Chair, Cyberspace Law Committee

BLS Annual Meeting, September 14-16 in Chicago

We look forward to seeing many of you at the 2017 Business Law Section Annual Meeting, scheduled for September 14-16, 2017, in Chicago. Plan to join us in the Windy City! The meeting registration brochure can be found [here](#).

The Committee is sponsoring a robust schedule of committee meetings, CLE, and social activities that will interest all lawyers --- with plenty of time to network and to learn about the latest in cutting edge technology law issues. If you want to learn more about Healthcare IT, Cybersecurity Issues in M&A and in supplier contracts, Smart Contracts and Blockchain, and Artificial Intelligence, we are offering the following CLE programs:

[Medical Technology in the IoT Age: What Business Lawyers Need to Know](#)

Have you ever wondered about the cybersecurity and privacy issues surrounding that fitness tracker you're wearing or the medical device you're using? How does ransomware and other hacking affect these devices? This program delves into these topics, from the US and the European perspectives.

[Avoiding the Next Yahoo!/Verizon: Cyber Security Due Diligence in M&A Deals](#)

We've all experienced or heard of cyber security incidents impacting our health records and financial transactions, among other things. Cyber security issues have become an increasingly important subject for due diligence reviews in merger and acquisition deals. Learn about the trends from the authors of the Business Law Section's new *Guide to Cybersecurity Due Diligence in M&A Transactions*.

[Vendor Risk - The Weakest Link in Your Cyber Security Strategy?](#)

Along with all of the other elements of a supplier relationship, cyber security has become an increasingly important concern for your contracts and program management. This panel will discuss the issues you should think about when engaging your suppliers of products and services - from both the procurement and supplier perspectives.

[Blockchain and Beyond: What are Smart Contracts and How will They Change Our Thoughts about Contract Law?](#)

It seems that blockchain is the new solution for handling sensitive information --- at least that's what a lot of people are advocating. But what are smart contracts, really? And how will these purported contracts impact your clients and your law practice? This program will provide some insights to the application of this technology and of the contract and other legal doctrines to smart technology.

[Connected Cars, Cyber Security, and CFIUS](#)

So you've purchased a connected car, with all kinds of onboard applications and functionality that can be remotely controlled. Or, you are thinking of adding some third party applications such as mapping, mobile payment and other programs to your connected car. What recent regulations can impact your use of a connected car? And what cyber vulnerabilities does the typical connected car have? Join our experienced panel of industry and legal experts to discuss these issues.

[Intelligent Eavesdropping: Legal Issue Raised by Digital Personal Assistants and Artificial Intelligence Devices Connected to the Internet of Things](#)

This panel will explore the new frontier of legal issues presented by "always listening" digital personal assistants ("DPAs"), such as Amazon's Alexa, Microsoft's Cortana, and Apple's Siri, including Fourth Amendment and First Amendment concerns involving speech, expression, censorship, and privacy. The business concerns raised by coding with Artificial Intelligence ("AI") and predictive search also will be explored.

Our Committee also has been asked by our colleagues in other Section committees to co-sponsor several programs of mutual interest. We have agreed to co-sponsor programs from the following Business Law Section Committees:

- Demystifying Artificial Intelligence: What Lawyers Need to Know About AI and Machine Learning? (Legal Analytics Committee)
- The Legal Art of Digital Communications: Navigating a World of Blacklists, Filters, and Anti-SPAM Regimes (Consumer Financial Services)
- Now I Need to Learn IT Too?: Meeting the Ethical Duty of Technological Competence (Technology)
- Your Client's Online Activities and the Law: A Case Study of Typical Cyber Law, Intellectual Property, and Promotional Gaming Violations Facing Companies Today (Gaming Law)
- Blockchain: How the Technology Behind Distributed Ledgers Will Impact Corporate Law and M&A Practice (Mergers & Acquisitions)

Again, make room in your calendar to attend our Chicago meetings --- it will be worth your time!!

News on Bitcoin, Taxes and Financial Privacy

By Steve Middlebrook, Womble Carlyle (smiddlebrook@wcsr.com)

There have been some interesting recent developments related to bitcoin, taxes, and financial privacy which Cyberspace members may find interesting. As you may recall, back in 2014, the IRS issued guidance saying that virtual currencies should be treated like property for tax purposes, meaning that, if between the time one acquires virtual currency and the time one uses it to buy something, its value increases or decreases, then the holder has a reportable capital gain or loss. This rule created a near impossible requirement that virtual currency users track their basis in each unit of virtual currency they acquire. Consequently, very few people complied with the guidance.

In light of recent upswing in the value of bitcoin and other virtual currencies, the IRS has tried to identify taxpayers with unreported income related to virtual currencies. In November, 2016, it convinced a federal court to issue a so-called "John Doe" summons to Coinbase, Inc., a leading bitcoin exchange and wallet service, seeking information on every one of the company's U.S. customers who engaged in a virtual currency transaction during the years 2013-15. The IRS petition stated that the agency was seeking to determine whether taxpayers who conducted virtual currency transactions during those years complied with tax law. The petition contained no allegations that specific individuals engaged in tax evasion, but noted that Coinbase held transactional information on a large number of bitcoin users.

The IRS petition was met with a strong negative reaction in the bitcoin community. The broad nature of the request, coupled with a lack of specific evidence that the thousands of people targeted had engaged in illegal activity, led many to describe the summons as a "general warrant," akin to the illegal practices of King George described in the Declaration of Independence. Coinbase refused to comply with the IRS's demand and several of its customers have intervened in the legal proceedings in order to assert and defend their financial privacy. In addition, members of Congress have expressed interest in the matter and have written to the IRS seeking an explanation of the agency's policy in this area.

The backlash appears to have gotten the attention of the right people at the IRS. During a court hearing on June 29, 2017, a lawyer for the government is reported to have told the court that the agency intends to narrow the scope of its information request to Coinbase. It remains to be seen whether the IRS's modifications will be significant enough to appease Coinbase and its users and whether this overture will moot out the pending court challenges. In the long run, Congress needs to do more than write letters. Updating the tax laws to deal with virtual currency in a more appropriate and simple manner is squarely within its jurisdiction.

Further reading:

Ross Todd, IRS to Scale Back Bitcoin Account Data Request, The Recorder (June 29, 2017) <http://www.therecorder.com/id=1202791929451/IRS-to-Scale-Back-Bitcoin-Account-Data-Request>

IRS "John Doe" summons" <https://www.plainsite.org/dockets/330oss6rw/california-northern-district-court/-v-united-states-of-america/>

IRS guidance on virtual currencies: IRS Notice 2014-21, <https://www.irs.gov/pub/irs-drop/n-14-21.pdf>

Sen. Orrin Hatch letter to IRS Commissioner John Koskinen (May 17, 2017)

available at <https://waysandmeans.house.gov/wp-content/uploads/2017/05/2017.05.17-Coinbase-Letter-Hatch-Brady-Buchanan.pdf>

Rep. Polis letter to IRS Commissioner John Koskinen (June 2, 2017) available at https://polis.house.gov/uploadedfiles/060217_ltr_irs_digital_currency.pdf

Subcommittee News

From the International Trade Subcommittee

Co-chairs Hal Burman and John Gregory

The International Trade Subcommittee is considering a report and recommendation of the International Law Section supporting e-commerce provisions in international trade treaties. The Subcommittee has held a conference call on the topic and has another to come later in July. It is working with Committee leadership on a response from Cyberspace to be communicated to the Section's House delegates. The feeling at present is that the ILS document is not yet ready for prime time, and its consideration by the ABA should be deferred till the Midwinter meeting. If it is deferred, then the item would be on the Subcommittee's agenda at the annual meeting in Chicago. More information is available from the co-chairs, Hal Burman and John Gregory.

The Subcommittee will also review new cross-border interactions of blockchain type technologies and existing international laws and instruments, including whether CISG and the e-communications convention (ECC) will continue to work or may need protocol fixes and how the 1996 model law will work. There are also questions to review on how "contracts" which contain human readable content plus specialized computer code can be handled, where the latter may not be readable by persons and yet may trigger auto-enforcement issues.

Obligations and liability of software developers or intermediaries may also be raised (which could be a new twist on old UCITA issues - still unresolved in the US), along with the legal effect of non-monetary tokens in cross border commercial practice, and other matters.

Given that UNCITRAL has just devoted considerable time to an overview of these topics, it is prudent for the subcommittee to review priorities on what is appropriate for it to advise on.

From the Health IT Task Force

Chair Dina Ross

The Health IT Task Force is plugging right along, getting ready for our upcoming presentation: Medical Technology in the IoT Age: What the Business Lawyer Needs to Know. Wake up early on September 14 in the Chicago to join us!

Committee Members Out and About

Sarah Jane Hughes would like to draw attention to a call for comments from the Department of the Treasury. The Department invites comments on which regulations of the Department and its agencies, including FinCEN, OFAC, IRS, and the Bureau of Alcohol and Tobacco Tax Bureau, the Fiscal Service, and others should be repealed, replaced, or modified. The Federal Register notice specifically asks about regulation that eliminate jobs, are outdated or ineffective, impose costs greater than benefits, or are inconsistent with the Information Quality Act, 44 USC 3516. The relevant Federal Register notice appears at 82 Fed. Reg. 27127-27218 (June 14, 2017). Comments addressed to Brian Callanan, Acting General Counsel are due on or before July 31, 2017 and may be

submitted through all the normal channels for Treasury comments, including <http://www.regulations.gov>.

Additionally, the newest draft of the Uniform Regulation of Virtual Currency Businesses Act is available on the Uniform Law Commission's website, <http://www.uniformlaws.org>. Any last comments before the July 14, 2017 consideration of the Act for final approval should be made as soon as possible, and directed to Katie Robinson, katierobinson@uniformlaws.org. The most recent draft includes a refinement of a bailment approach for custodians of virtual currency modeled on and possibly incorporating Article 8 of the Uniform Commercial Code. Sarah Jane Hughes is the Reporter for this project. She can be reached at sjhughes@indiana.edu. Steve Middlebrook is the ABA Advisor.

Other Other Programs of Interest

[Fundamentals of Today's Trade Secret Litigation: The DTSA, Section 337 at the ITC, and More](#)

Date: July 18, 2017

Format: Webinar

[Smart Speakers as Discoverable Evidence: Helper or Witness for the Prosecution?](#)

Date: August 3, 2017

Format: Webinar

[2017 ABA New York Annual Meeting](#)

Date: August 8-15, 2017

Format: In Person, New York City

(with an extensive CLE program, including a Fintech track, cybersecurity, and more)

[Flying Through Government Thunder Clouds: Navigating Cloud Procurements, Cybersecurity, & Regulatory Issues in the Public Sector](#)

Date: August 17, 2017

Format: Webinar

[Managing Cybersecurity Due Diligence in Technology M&A Transactions](#)

Date: September 12, 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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