



August 2017

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September 14-16, 2017  
Chicago, IL

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## Message from the Chair

Cyberlawyers,

Even in August, your Cyberspace Law Committee works on projects that help your practice. With several books in the works or recently completed, we can offer you the chance for publication and/or to learn from the top lawyers in the field. With a technological emphasis in the newly updated *Business Law Today*, we can offer a place for expression of your more bite-sized thoughts. We have a new subcommittee structure and with a Robotics and Artificial Intelligence Subcommittee, a Smart Contracting Subcommittee, and a new Cyber Insurance Subcommittee, we can help draw out the latest cases and research.

Of course, we have completed planning for the Business Law Section Annual Meeting in Chicago next month, and can offer not only our Committee meeting and the gatherings of all our subcommittees and task forces, but the CLE panels listed below. Join us in Chicago or contact our leadership if you have an idea or a project you want to bring to the world. We can help.

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. Please plan to join us in the Windy City! There still is time to register - see the meeting brochure [here](#).

The Committee is offering 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 and vendor contracting, smart contracts and blockchain, and artificial intelligence, please plan to attend the six CLE programs we are sponsoring. And support your fellow Committee members -- who have worked hard to prepare and present these useful and timely 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 do 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: Cybersecurity Due Diligence in M&A Deals](#)

We've all experienced or at least heard of cybersecurity incidents impacting our health records and financial transactions, among other things. Cybersecurity issues have become an increasingly important subject for due diligence reviews in merger and acquisition deals as a result. 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 Cybersecurity Strategy?

Along with all of the other elements of a supplier or vendor relationship, cybersecurity has become an increasingly important concern for your enterprise, as well as your contracts and program management. This panel will discuss the issues you should think about when engaging suppliers and vendors 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 Issues 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 has also agreed to co-sponsor seven programs put together by 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)
- Wait, 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)
- Cybersecurity and Data Protection Guidance for Law Firms: Protecting Your Clients' Crown Jewels in the Age of the Internet (Business and Corporate Litigation) and
- Legal Issues in the Digital Economy: Tax, IP, Privacy and Security (Taxation)

And plan to catch up with fellow committee members and network with others, at the Corporate Compliance/Corporate Counsel/Cyberspace Law/Intellectual Property/White-Collar Crime Joint Committee Dinner, sponsored by: Morvillo Abramowitz Grand Iason & Anello PC, at Cyrano's Café & Wine Bar, 233 E. Lower Wacker Drive. A reception is at 7:30 p.m., and dinner is at 8:00 p.m.

Tickets are \$85 and can be purchased via the registration website.

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

## Subcommittee News

### **From the Enterprise Technology Subcommittee**

*Co-chairs Candace Jones and Cheryl Burtzel*

Building on work the Enterprise Technology Subcommittee has done over the past 18 months, Bill Denny has organized a program for Chicago: *Vendor Risk: The Weakest Link in Your Cybersecurity Strategy*. Look for the program in between other Cyberspace subcommittee meetings on Thursday, September 14 from 1:00 - 2:30 p.m.

The Subcommittee will not meet separately in Chicago, but join us at the Cyberspace Law Committee meeting, where Cheryl Balough will introduce our new Subcommittee cochair. We will have more information about the Subcommittee agenda then.

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

*Co-chairs Hal Burman and John Gregory*

The International Trade Committee will report in Chicago on three themes of its work since the Spring meeting: the review of the International Law Section's proposal for an ABA resolution on e-commerce and trade agreements; a summary of our general reflections on that topic; and an overview of the new UNCITRAL Model Law on Electronic Transferable Records, adopted in July of this year. It will also orient its discussions for the coming months, notably on identity management issues being considered by several international bodies and also on international structures for cloud computing. All topics are taken for their interest to the ABA business lawyer in practice: what should we know, what should we anticipate?

### **From the Health IT Task Force**

*Chair Dina Ross*

The Health IT Task Force is finalizing its presentation: *Medical Technology in the IoT Age: What the Business Lawyer Needs to Know*. Join us in Chicago on September 14, bright and early at 8 am!

### **From the Consumer Privacy and Data Analytics Subcommittee**

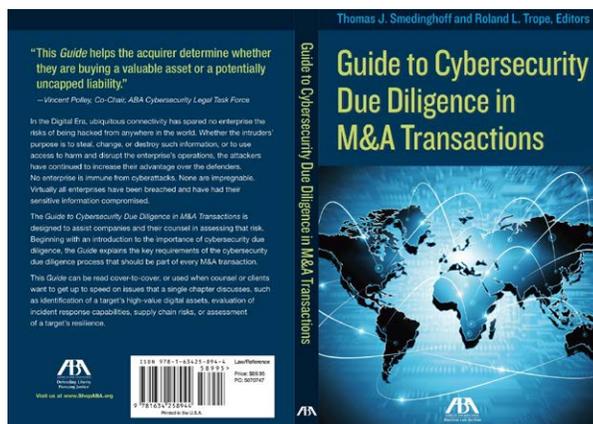
*Co-chairs John Rothchild and John Isaza*

Please join the newly-formed Consumer Privacy and Data Analytics Subcommittee (CPDAS) at our upcoming annual Business Law Section meeting to be held in Chicago. The CPDAS is scheduled to meet at 4:00 p.m. on Thursday, September 14. This will be our initial meeting, so you will have an opportunity to provide guidance and input from the outset. John Isaza and John Rothchild will be co-chairing the CPDAS. Mr. Isaza is stepping down from the disbanded Social Media Subcommittee. The CPDAS intends to continue treatment of the privacy and data retention aspects of social media within its broader charter.

Check upcoming program materials for the room where the CPDAS will meet on Thursday, September 14 at 4:00 p.m. In the interim, we look forward to seeing you there for our maiden voyage into this dynamic and exciting subject.

## New Book - *Guide to Cybersecurity Due Diligence in M&A Transactions*

Roland Trope reports that his and Tom Smedinghoff's new book, *Guide to Cybersecurity Due Diligence in M&A Transactions* is now scheduled to be published August 10. That is also the date on which copies of the book will be in inventory and available for purchase online.



From Roland:

The ABA Standing Committee on Ethics and Professional Responsibility recently issued [Formal Opinion 477R on Securing Communication of Protected Client Information](#).

It's an important ethics opinion that applies to all lawyers and is of particular significance for lawyers in the CLC.

The Opinion updates an opinion issued back in 1999, because the proliferation of new communications devices and their rapid adoption by lawyers had the effect of making the earlier opinion somewhat outdated, and needed to be updated with new guidance.

The Committee focused on the duty of confidentiality, and took as its point of departure the 2012 amendment to Model Rule 1.6 that created a "new duty" in subsection (c): "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." The Opinion devotes most of its attention to giving lawyers guidance on how lawyers should determine what "reasonable efforts" they must make to fulfill that new ethical duty.

Here's where Tom Smedinghoff's work comes in. The Committee adopted as its standard for "reasonable efforts" a quoted passage from the *ABA Cybersecurity Handbook*, from the chapter co-authored by Tom Smedinghoff and Ruth Hill Bro.

The passage that has become the new standard in Opinion 477R states, that the "reasonable efforts standard":

"adopts a fact-specific approach to business security obligations that requires a 'process' to assess risks, identify and implement appropriate security measures responsive to those risks, verify that they are effectively implemented, and ensure that they are continually updated in response to new developments."

The balance of Opinion 477R unpacks that standard and explains in detail how to apply it to each client a lawyer represents.

What he and Ruth wrote reflects decades of experience in cybersecurity.

It's an outstanding accomplishment - and one that I have heard described in some meetings as simply "the Committee adopted language from the ABA Cybersecurity Handbook" - but I think CLC members should know that Tom co-authored the language the Committee adopted as the new standard. The Handbook was published in 2013, and Opinion 477 in 2017. So what Tom and Ruth crafted four years ago took time, but has had significant influence.

## Uniform Regulation of Virtual Currency Business Act Update

Sarah Jane Hughes reports that the Uniform Law Commission has overwhelmingly approved the Uniform Regulation of Virtual Currency Business Act project for state enactments. Sarah Jane Hughes was the reporter, and Steve Middlebrook was also involved; Sarah Jane called Steve's help "tremendous". Other committee members involved included Keith Rowley and Anita Ramasastry.

Sarah Jane gave an interview to Aaron Stanley of Coindesk, the VC industry trade newsletter, on August 2 about the innovative features of the Act. She is also presenting to the Council of State Governments' meeting on August 17th about the Act and next steps towards state enactments.

## Other Other Programs of Interest

[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

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