Message from the Chair

Dear Cyberspace Colleagues:

Thank you for the many great program proposals for our Cyberspace Law Institute/Winter Working Meeting on January 26-27. Our presenters will include several people new to the Cyberspace Law Committee, and we look forward to welcoming them. There is room for one more roundtable, so please let Ed Morse or Cheryl Burtzel know if you would like to lead a lively discussion on an innovative topic. Most importantly, register now for the meeting. Plan to arrive early enough on Thursday, January 25 so you can join us for an evening reception sponsored by Womble Bond Dickinson (the former Womble Carlyle), where Ted Claypoole and Steve Middlebrook will play host. And plan for a day and a half of programs, meetings, discussions, and networking on Friday through midday Saturday. Please see below for more details.

We are fortunate to also have a new corporate sponsor, Charles River Associates, a leading global consulting firm that offers economic, financial, and strategic expertise to major law firms, corporations, accounting firms, and governments around the world. Thank you for supporting the Cyberspace Law Committee!

When you register for the Cyberspace Law Institute, remember to register for Friday evening's dinner at Mary Mac's Tea Room. We'll enjoy Southern comfort food at this historic restaurant, which has been officially declared "Atlanta's Dining Room." The restaurant is a short walk from the Renaissance Atlanta Midtown, where a special rate is available.

Work continues on two books: one on AI and machine learning, edited by Ted Claypoole and one on drafting and negotiating effective cloud computing agreements, edited by Lisa Lifshitz and John Rothchild. If you would like to contribute or review a chapter, please reach out to the editors.

We welcome at any time ideas for articles, webinars, or other projects. Share your knowledge and passion, and let us help you look good.

Cheryl Dancey Balough
Chair, Cyberspace Law Committee

Subcommittee News

From the Consumer Privacy and Data Analytics Subcommittee

John Isaza

The Consumer Privacy and Data Analytics Subcommittee (CPDAs) is pleased to announce that it will be presenting at the January 26-27 Cyberspace Winter Working Meeting in Atlanta on the following cutting edge topic:

Title: Biometrics in Law: It's Not Just Fingerprints Anymore

Description:
This will be a panel presentation on the privacy and security issues raised by new technologies that use biometric information for identification and authentication. To that end, governments and private enterprises are increasingly attempting to leverage those technologies in service of the greater good. However, biometric information is derived from an individual's unique and immutable (or nearly so) physical or behavioral characteristics. Fingerprints are a familiar type of biometric. Newer technologies include iris scans, speech patterns, facial or hand geometry, walking gait, keystroke dynamics, brain patterns, ear shape, and vascular patterns. Use of biometric information can add convenience to identification and authentication procedures, and unlike passwords your biometric information cannot be forgotten. But biometric systems can result in a loss of privacy and anonymity, allowing us to be tracked surreptitiously by both the government and commercial entities. In addition, unauthorized access to a database of biometric information is much more serious than a breach of a password database, since passwords can be changed but the shape of your ear cannot. The panelists will discuss these issues, and will review some of the proposed and enacted legal responses to them.

Presenters:
Neerav Merchant, Majmudar & Partners, Mumbai, India
Erin J. Illman, Bradley Arant Boult Cummings LLP, Charlotte, North Carolina
John Isaza, CEO, Information Governance Solutions
Moderator: John A. Rothchild, Wayne State University

From the Crossborder E-Commerce Subcommittee
John Gregory and Hal Burman

At the end of October, the Subcommittee concluded a series of drafting calls for a four-section (Business Law, International, SciTech and IP) agreed text of a Report and Recommendations (R&R) for the January agenda of the ABA midyear meeting agenda. The R&R proposes Model Provisions on E-Commerce for trade or other agreements, international guidelines, etc. The provisions cover data transfers, data uses and rights, undertakings to enhance security, commercial and contract law upgrades, and other elements of such agreements.

The Subcommittee spent several preceding conference calls reviewing these issues and presented concerns to the four-section collaboration. The agreed-upon text incorporated and addressed this Subcommittee's recommendations, including widening the scope of application beyond just trade agreements; adding international bodies, not just governments, to the places where these Models could be promoted; and preserving private rights action under treaties such as the UN convention on e-commerce law.

If the Model Provisions are adopted as ABA policy, the Subcommittee would then work with others starting in February to promote their use.

In November and December, the Cross Border E-Commerce Subcommittee will review proposals for UN guidelines or rules involving cross/border “cloud” data uses or contracts, identification management across borders, and a return to the deferred review of e-Commerce actions or proposals at selected international bodies including the Inter-American Development Bank, APEC, UNCITRAL, UN ESCAP, UN ECE, WTO, ISO and ITU.

Uniform Regulation of Virtual Currency Update

The Uniform Law Commission has released for comments a companion act to the Uniform Regulation of Virtual Currency Businesses Act that would apply standards from UCC Article 8 to businesses that take control over virtual currencies belonging to third-party users. The deadline for the first-round of public comments on the new act is November 9th. A meeting of the Drafting Committee
is being planned for 2018, and the ULC expects to read the companion act at its July 2018 Annual Meeting. Sarah Jane Hughes is the Reporter for the companion act.

Separately, Sarah Jane Hughes was nominated by an anonymous person (not herself) as one of the "most influential people in blockchain" in a poll organized by CoinDesk, the virtual-currency newsletter. SJH is nominated in the "Labor and Public Policy" segment of the poll, along with CoinCenter's Peter Van Valkenberg and Jerry Brito, Jay Clayton of the SEC, and Vladimir Putin. SJH reports being "very flattered" and "totally surprised" by the nomination.

Cyberspace Law Institute/Winter Working Meeting

Members of the Cyberspace Law Committee will convene in Atlanta, Georgia on January 26-27, 2018 for this year's Cyberspace Law Institute and Winter Working Meeting. Registration is now open here.

Please plan to arrive on Thursday evening and be prepared to spend all day Friday until noon on Saturday with your Cyberspace colleagues. We have over five hours of CLE programs in the works, including programs on these topics:

- Important Developments in Cyberspace Law: The Year in Review
- Biometrics in Law: It's Not Just Fingerprints Anymore
- Cyber-Risk: You Can Only Manage What You Can Measure
- Fintech Innovation in China
- Brainspray!
- Trends and Developments in Data Breach and Ransomware Incidents

We also plan to have an hour-long program that will qualify for ethics credit.

In addition to CLE programs, we have scheduled roundtable discussions, which currently cover topics including Intermediary Liability and Intelligent Agents and the Internet of Things. These roundtables are designed to allow opportunities for knowledge sharing as well as interactive development. We will have time for our subcommittees and task forces to work together.

There will be more to come soon as the program agenda is completed. Please come and join the fun. This is a great way to meet new friends and to get involved in the work of this committee, which is simply the best that the Business Law Section has to offer! (On a personal note, I first came to one of these meetings nine years ago and have been coming regularly ever since. There is too much learning - and too much fun - to miss out.)

Ed Morse, Program Chair
morse@creighton.edu

Thank you to our meeting sponsors:
Payments Book: The Check is in the Mail!

Well, perhaps not literally, but our long-awaited payments book is currently at the printer. We have finalized the title as *Electronic Payment Systems: Law and Emerging Technology*. Page proofs have been reviewed, the cover art has been chosen, and the final stages of production are being completed. This book reflects the collaboration of many members of our Cyberspace Law community. Drawing upon our networks, we were able to bring in authors from Canada, Switzerland, the UK along with others from across the United States to address the many facets of the payments industry. Watch for the book later this month - it should arrive just in time for the peak holiday shopping season! You will want one in your stocking!

Ed Morse, Editor
morse@creighton.edu

Other News

Drexel Law School in Pennsylvania is looking for an entry-level cybersecurity faculty member, according to a note that CLC’s Amy Boss, Dean of the law school, circulated recently.