Message from the Chair

Dear Cyberspace Colleagues:

Welcome to 2018. As I read the predictions of bloggers and the press about cybersecurity threats for the new year, I am reminded how the Cyberspace Law Committee is always ahead of the curve-thanks to the quality of your work! I look forward to the thought-provoking discussions we will share in a couple of weeks at the 2018 Cyberspace Law Institute and Winter Working Meeting.

I hope that you are registered for the meeting on January 26-27 at the Georgia Institute of Technology. The program is full of CLE programs on timely topics, roundtables, subcommittee meetings, input from Georgia Tech researchers, food/drink, and many opportunities for networking. You can read more below about some of the subcommittee projects and offerings at the meeting. Online registration will end soon, and the hotel block is available only through January 11, so please get those reservations in now. Your participation is welcome!

After publishing two best-sellers in 2017, our committee has started off 2018 with another winning book, Electronic Payment Systems: Law and Emerging Technologies, edited by Prof. Ed Morse, our Cyberspace Committee Program Chair. A big thank you to Ed and all of you who contributed to this volume, which is valuable for both those who counsel regularly in this field and those who are beginning to explore the topic.

Look for the annual “Survey on the Law of Cyberspace” to come out later this month in The Business Lawyer. If you would like to contribute to this annual publication, the Cyberspace newsletter, Business Law Today, or any of the books we have in the works, please let me know.

I hope to see you in Atlanta!

Cheryl Dancey Balough
Chair, Cyberspace Law Committee

Subcommittee News

Check out what each of the subcommittees are planning for the upcoming Cyberspace Law Institute and Winter Working Meeting!

From the Robotics and Artificial Intelligence Subcommittee

The Robotics and Artificial Intelligence Subcommittee is looking for humans to help plan and participate in a webinar or two for 2018. We’d like your input at the Cyberspace Law Institute and Winter Working Meeting (WWM) to discuss topics. For example, one webinar may discuss who is liable when a robot, artificial intelligence, or machine learning goes wrong. The subcommittee will meet immediately following its Friday roundtable presentation on Friday afternoon about using artificial intelligence to manage legal risks by detecting anomalies. If you will not be at the WWM and would like to participate in the subcommittee or any of its activities, please contact either of the co-chairs Lisa R. Lifshitz or Richard C. Balough.
From the Current Law Task Force

The Current Law Task Force tracks and reports on recent developments in cyberspace law and serves as an incubator for presentations and publications. New members are welcome, and the Task Force offers a variety of publication opportunities for Cyberspace Committee members, including short-form updates. At the upcoming Cyberspace Law Institute/Winter Working Meeting, we will be discussing strategies to expand participation in the Task Force, publication of short and long form articles, coordination with other ABA subcommittees, and ideas for CLEs and other presentations. In the past year, members of the Current Law Task Force have presented at the ABA Business Law Section's annual meeting and published a number of pieces in Business Law Today and the Cyberspace Newsletter.

The next meeting of the Current Law Task Force will be held on Friday, January 12 at 10:30 am CT/11:30 am ET. The dial-in information is below.

Call In: 312-667-9356
Conference ID: 079455
Security Pin: 160049

From the Cyberinsurance Subcommittee

The Cyberinsurance Subcommittee will be discussing the panel presentation that has been approved for the 2018 Business Law Section Spring Meeting in Orlando, entitled "Cyberinsurance: Coverage, Claims and Cross-Border Concerns". The Subcommittee will also discuss other possible projects including the development of a checklist or article to assist corporate counsel in assessing the cyberinsurance needs of, and cyberinsurance coverages available to, the different types of entities that they serve or advise (e.g., healthcare organizations, professional services firms, manufacturers, etc.).

From the Smart Contracting and Blockchain Subcommittee

The Smart Contracting and Blockchain Subcommittee will meet on Saturday at 9:30 a.m. We will brainstorm about questions that the subcommittee should address, such as what is a smart contract, what are its limitations, who are the participants and what terms apply, and come to consensus concerning what legal guidance the subcommittee could provide in this emerging field. Immediately following the subcommittee meeting, we will convene the roundtable entitled "Blockchain Technology and “Smart Contracts”: Understanding Opportunities and Challenges Through Examination of Specific Use Cases." At the roundtable, we will hear from Professor Carla Reyes from the Berkman Klein Center for Internet & Society at Harvard University and Visiting Assistant Professor at Stetson University College of Law. She will present and lead our discussion of concepts, legal challenges, and innovative opportunities associated with blockchain technology and smart contracts in the context of two significant use cases: the digital asset exchange and self-sovereign identity. Our discussion will include a brief background explanation of terms and technology, privacy and identity issues, custodianship of digital assets and private keys, unintended consequences, security issues, and compliance with legal regulation by agencies such as the OCC, SEC, CFTC and IRS. We will also consider, inversely, the ways that regulatory agencies are using blockchain technology to enhance enforcement and implementation of the regimes under their purview.

From the Enterprise Technology Subcommittee

The Enterprise Technology Subcommittee will launch a new book project in Atlanta. The book, Enterprise Technology Directors Handbook (working title), will be targeted for an audience of corporate directors and business lawyers. Our goal is to compile essential information to introduce directors to a range of technology topics they may encounter. We will use our time at the Winter Working Meeting to
outline the content, and we will be looking for authors to contribute chapters. We expect the book to complement other more comprehensive Committee and Section publications.

From the Electronic Payments and Financial Services Subcommittee

The Electronic Payments and Financial Services Subcommittee will offer for discussion such diverse topics as the increasing interest in foreign governments to adopt or create virtual currencies as national currencies (with some interested primarily in using VCs to avoid international economic sanctions), to the benefits and problems inherent in possible "fintech" federal charters, and the growing willingness of courts to use of first-amendment "commercial speech" doctrine to defeat state-based regulation of consumer credit disclosures and terms.

From the Health IT Task Force

The Health IT Task Force looks forward to starting 2018 off right. We will discuss how to address the FDA's recent guidance on "Software as a Medical Device" along with what we want our Task Force to focus on in the coming year.

From the Non-US Cyber Regulation Subcommittee

The Non-US Cyber Regulation Subcommittee will meet at 2:15 p.m. on Friday, January 26, in Atlanta. We will continue the conversation begun during the roundtable discussion on GDPR and Brexit, which co-chair David Flint will lead along with his colleagues Valerie Surgenor and Prof. Milton Mueller of Georgia Tech's Institute for Information Security and Privacy. Significant legal issues affecting cross-border transactions may deserve further attention from our subcommittee, either in the form of a project or program. On another front, cryptocurrencies have spread far beyond the usual suspects, including Bitcoin and Etherium, to include a host of other alternatives. We would like to delve into the topic of emerging frameworks for regulation of these currencies outside the U.S., including securities law regulations affecting coin offerings, AML concerns, and perhaps even taxation. These topics are on the leading edge, and we look forward to a robust conversation about them. Please come and join us! If you want to participate by phone, please email Ed Morse and we will do our best to accommodate your interest.

From the Consumer Privacy and Data Analytics Subcommittee

The Consumer Privacy and Data Analytics Subcommittee will (1) discuss hot topics in the consumer privacy and data analytics space, (2) brainstorm ideas for a subcommittee project, and (3) make plans for the Spring meeting.

Researches Identify Processor Kernel Security Flaw

Heidi Kuffel - Skarzynski Black LLC

Security researchers have identified an operating system-level security issue with Intel processors based on x86-64 architecture. The reported flaw potentially allows user software to access normally hidden kernel memory, which could expose sensitive information such as passwords, login keys, etc. in the kernel. Developers are reportedly working on patches, including kernel changes at the operating system level for Windows, Linux and MacOS. Fixing the issue may negatively impact performance, however, due to separating user processes from the kernel memory; some estimate that patching the security issue could cause up to a 30 percent slowdown in performance depending on the chip model and software function.
What is next for net neutrality?


On December 14, 2017, the FCC voted down party lines to repeal the net neutrality regulations put in place in 2015. Without the net neutrality regulations in place, internet service providers (ISPs) will no longer be required to provide equal treatment to websites, and broadband providers will be able to throttle or slow traffic to certain sites, provide "fast lanes" for some sites or services, or potentially block access to sites or services, among other things. In response, some states, including New York, California, and Washington are proposing state-level net neutrality rules. These proposals take a number of approaches; for example, the proposed New York bill would prohibit state and local government contracts with broadband providers who do not commit to net neutrality. Net neutrality regulation at the state level, however, could potentially raise federal preemption challenges.