Message from the Chair

Dear Cyberspace Colleagues:

I look forward to seeing many of you in Orlando at next week's Spring Meeting. Our full Cyberspace Law Committee meeting (9:30-11 on Thursday, 4/12) will include short presentations on two "regional" regulations that impact businesses nationally. Tom Capezza (from Carter Conboy in Albany, New York) will share information about the New York State Department of Financial Services rule on "Cybersecurity Requirements for Financial Services Companies." Lisa Lifshitz (from Torkin Manes in Toronto) will discuss Canada's proposed "Breach of Security Safeguards Regulations." Come hear how these regs will impact your clients.

A copy of the full list of Cyberspace Law Committee meetings and programs is noted below with a short description of each. Stop in whichever meetings sound interesting and get involved with the work of our committee. Of course, if you haven't yet registered, you can do that onsite. You also can purchase there a ticket to our joint committee dinner on Thursday evening (if they haven't sold out). We will be going to Cuba Libre, where we'll enjoy a variety of tapas, beer, and wine for the all-inclusive price of just $60.

If you can't make it to Orlando, note that you can phone in to any of our committee or subcommittee meetings. The dial-in information can be found here.

Please let Cheryl Burtzel or me know how you would like to get involved!

Cheryl Dancey Balough
Chair, Cyberspace Law Committee

BLS Spring Meeting - April 12-14 - Orlando, Florida

If you haven't registered for the BLS Spring Meeting, you can still do so onsite. Highlighted below are descriptions of our committee/subcommittee/CLE programs. We know there's some overlap, but we do not take offense if you split your time between two concurrent meetings. Here's our schedule:

Thursday, April 12

8:00 - 9:00 am: Cyber Insurance Subcommittee Meeting (Chair: Black)

- Discuss development of checklist or article to help corporate counsel assess cyber insurance needs and coverages for different types of entities they serve (healthcare organizations, professional services firms, manufacturers, etc.). Preview the afternoon panel.

8:00 - 9:00 am: Cross-Border E-Commerce Subcommittee Meeting (Chairs: Burman/Gregory)

- Discuss proposals for new work projects and relevant upcoming action meetings at the UN.
9:30-11:00 am: Cyberspace Law Committee Meeting (Chair: C. Balough)

- Presentations by Tom Capezza and Lisa Lifshitz on impact throughout U.S. of New York State Department of Financial Services rule on "Cybersecurity Requirements for Financial Services Companies" and Canada's proposed "Breach of Security Safeguards Regulations." Committee business updates.

11:00 am - Noon: Consumer Privacy & Data Analytics Subcommittee Meeting (Chairs: Isaza/Rothchild)

- Working on a project to create a checklist of legal issues that should be considered when advising organizations that make use of personal data. Project is in its early stages, and new participants are welcome.

11:00 am - Noon: Smart Contracting Subcommittee Meeting (Chairs: Denny/Ottaviani)

- Continue work on (a) developing a webinar or program for Annual Meeting on basic terminology of smart contracts and blockchain, both at a technical and business level, and (b) exploring legal issues raised by the technology, focusing on the security/privacy and contract/transitional areas.

12:00 noon - 1:00 pm: Robotics & Artificial Intelligence Subcommittee Meeting (Chairs: R. Balough/Lifshitz)

- Organize potentially two CLE events: a program for the Annual Meeting and a webinar in the fall. AI is a hot topic, and we want to have programs that educate business lawyers on legal issues AI presents across industries. We encourage your input and speaker suggestions.

12:00 noon - 1:00 pm: Publications Subcommittee Meeting (Chair: Moringiello)

- Do you have an idea you want to share with the world? Of course, you do! Join us to learn how the Section can help you publish everything from a 75-word paragraph to a book.

1:00 - 2:00 pm: Cybersecurity Subcommittee Meeting (Chairs: Smedinghoff/Trope)

- Discuss possible new projects.

2:00 - 3:00 pm: Financial Services and Electronic Payments Subcommittee Meeting (Chairs: Hughes/Middlebrook)

- Discuss two developments - (1) flurry of regulatory guidance from federal regulators since January 1, 2018 pertaining to virtual currencies and (2) amendments to Regulation designed to implement same-day settlements and expansion of the warranties and indemnities provided to encourage banks to engage in more electronic collection and return of checks.

2:00 - 3:30 pm: Cyberinsurance: Coverage, Claims and Cross-Border Concerns (Chair: Black) - CLE

- A discussion of insurance coverage, claims and emerging issues in cyber insurance in the U.S. and EU, discussing the effect of the GDPR, cross-border concerns and the disparate cyber risks faced by different types of businesses, such as healthcare, financial institutions, professional organizations and manufacturers.

3:00 - 4:00 pm: Cloud and Enterprise Technology Subcommittee Meeting (Chairs: Jones/Wilson)
- Recruiting volunteers for a new book project with the working title *Directors' Technology Handbook*. There are a variety of ways to contribute to this project, so please join us to learn more.

**4:00 to 5:00 pm: Non-US Cyber Regulations Task Force Meeting** (Chairs: Flint/Morse)

- Discuss recent legal developments, including implications of the CLOUD Act (The Clarifying Lawful Overseas Use of Data Act) for US and non-US entities with Data Center operations overseas, and issues for US practitioners arising from published draft Brexit Agreement.

**7:30 - 10 pm: Committee Dinner**

- Ticketed function at *Cuba Libre* - If this fun joint-committee dinner has not sold out by the time you check in with Registration in Orlando, make sure to get a ticket and join us. It's just $60 for drinks and a tapas dinner!

**Friday, April 13**

**10:30 am - 12:00 noon: Legal Issues Arising from the Use of AI to Provide Financial Services** (Chair: Middlebrook) - CLE

- Discussion of how AI is used in financial services, how regulators may view the new technology, and possible legal and compliance issues in AI projects. An important topic will be so-called "algorithmic bias," or the potential for unintentional discrimination to creep into the AI process, and how financial services providers can monitor for algorithmic bias and prevent UDAAP violations.

**2:30 - 4:00 pm: What's Lurking Back There: Cybersecurity Risks in Legacy Systems** (Chair: Ng) - CLE

- Discussion of risks associated with outdated legacy systems that are still pervasive across industry and government. After addressing the systems' roles in many high-profile data breaches, the panel will offer tips on how to manage those associated risks while migrating to new systems.

You can access the full agenda [here](#).

### Subcommittee News

**From the Cloud & Enterprise Technology Subcommittee**

The Cloud & Enterprise Technology Subcommittee is recruiting volunteers for a new book project, working title *Directors' Technology Handbook*. There are a variety of ways to contribute to this project: write a chapter, help socialize the project and solicit feedback from our target audience, or read and comment as a peer reviewer. Our goal is to leverage the broad expertise of Committee members to develop a practical reference for company directors and their legal advisors and to highlight the more comprehensive books and articles published by the Committee and the Section.

If you are not able to attend the Spring Meeting in Orlando, please reach out to Isvara or Candace directly for more information.

**From the Consumer Protection and Data Analytics Subcommittee**

The Consumer Protection and Data Analytics Subcommittee will pursue a project to create a checklist of legal issues that should be considered when advising organizations that make use of personal data. The project is in its early stages and additional participants are welcome.
From the Current Law Task Force

Current Law Task Force Meeting - 4/18

Are you interested in writing about emerging topics in cyberspace law? Would you like to publish a piece on a recent development, but don't have the time to draft a long article? Are you looking for a way to get more involved with the Cyberspace Law Committee without traveling to a meeting?

If so, call in to the next meeting of the Cyberspace Law Committee's Current Law Task Force on April 18 at 10:30 am CT/11:30 am ET. New members are always welcome.

The Current Law Task Force tracks and reports on recent developments in cyberspace law and serves as an incubator for publications and presentations. There are a variety of available publication opportunities, including contributions to the Cyberspace Law Committee Newsletter and Business Law Today. The Task Force can help you publish works of varying length and detail, ranging from long-form articles to pieces as brief as one paragraph.

The Current Law Task Force meets through monthly conference calls to discuss new developments and ideas for publications. The dial-in information for the call is below:

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

From the Cyber Insurance Subcommittee

The Cyber Insurance Subcommittee will be discussing the development of a checklist or article to assist corporate counsel in assessing the cyber insurance needs of, and cyber insurance coverages available to, the different types of entities that they serve or advise (e.g., healthcare organizations, professional services firms, manufacturers, etc.).

In addition, the Cyber Insurance Subcommittee is co-sponsoring a panel titled "Cyberinsurance: Coverage, Claims and Cross-Border Concerns" at the 2018 Business Law Spring Meeting, which promises to be a fascinating discussion. Find out more below:

In the wake of very public data breaches and malware attacks, cyber insurance has become an important tool in a modern organization's arsenal to defend its operations and confidential information from cyberattack. However, the protections afforded by cyber insurance sometimes are not well understood because policies are not standardized and can be complex and technical. Moreover, understanding the scope of such coverage can be even more challenging in light of evolving cyber risks that organizations face. Criminals, hacktivists, rogue employees and nation-states relentlessly seek to exploit vulnerabilities within organizations to disrupt business operations and steal valuable trade secrets, personal information and money. The recent adoption of laws and regulations such as the EU General Data Protection Regulation ("GDPR") introduces further uncertainty for organizations as they strive to address new legal obligations and exposures.

Against this backdrop, a panel comprised of cyber insurance professionals and lawyers will address these developing business and legal issues and the protection that may be afforded under cyber insurance. The panel, which includes cyber insurance underwriters from two major insurers, a senior cyber claims representative from a major insurer, a cyber insurance broker, and U.S. and EU attorneys who deal with privacy law and cyber insurance and claims, will discuss the nature and scope of insurance currently available for cyber risks and describe
the claims that have arisen under cyber insurance. Following this, the panel will examine the likely impact of the GDPR on data privacy exposures facing U.S. and EU organizations and the cyber insurance coverages available for emerging cyber exposures including for the new obligations imposed by the GDPR.

What’s Up with the DMCA Fight Over Defunct Online Games?

Every three years the U.S. Copyright office accepts public comment in its rulemaking committee. That window is open, and one commenter has asked for an expansion to an exemption to the DMCA’s anti-circumvention provisions. The exemption, if granted, would allow for reverse engineering and restoration of video game servers. The Entertainment Software Association has opposed the change. This article explores the issues and the relative positions of the parties involved.

A New Construct for Regulating Data as Property

In the last year, German and Japanese ministers called for the formulation of new rules defining who owns digital information. Now, with the Internet of Things, blockchain, and quantum computing accelerating with unprecedented velocity, "Who owns the data?" is more and more critical to how markets and transactions for digital assets will evolve.

Jeffrey Ritter, the founding chair of the Committee on Cyberspace Law and now a Visiting Fellow at the University of Oxford, along with his co-author, Anna Mayer, has just published in Duke Law & Technology Review a new proposal that is grounded on the principle that digital information is actually physical matter, not intangible. Their proposal adapts domestic and international law reforms with which the Committee has been actively involved during the last 30 years to respond to the realities of the value of digital assets.

You can read the article here. Jeffrey welcomes all comments, criticisms, and suggestions; you can reach him at jeffrey@jeffreyritter.com.

2018 BLS Spring Meeting - Public Service Projects

The Section is excited to share a public service project opportunity at the upcoming Spring Annual Meeting, April 12-14, in Orlando, FL. A brief descriptions of the project is below; to learn more visit the Spring Meeting Public Service Projects webpage.

- The Consumer Financial Services Committee is partnering with the Orlando chapter of Junior Achievement to teach financial literacy to students in local high schools. Volunteers will deliver two to three 45-minute sessions of the JACF materials on identity theft to 12th grade classes at Orlando area high schools. JACF will provide a training webinar in advance of the meeting to make sure that volunteers are comfortable with the material. The program is Friday, April 13, 2018, 7:00 am - 11:30 am, and volunteers should have sufficient time to return to the Rosen Shingle Creek for the Section Luncheon at 12:30pm. To sign-up, register via JACF's registration portal by April 2, 2018. We ask that you please register early so that you can be cleared as a volunteer by the local school district prior to your arrival.
Short Survey about Cloud Services and Data Analytics

The Mergers & Acquisitions Committee's Technology in M&A Subcommittee is exploring the questions of whether using cloud services that perform analytics on data might compromise client confidentiality or force a waiver of privilege. They would appreciate it if you could help by taking this very quick survey.

Information Law Journal

If you are interested in information law issues, you might want to take a look at the most recent issue of the Information Law Journal, which is issued by some of our friends in SciTech.

Call for Future Contributions

Do you have something that might make a good contribution to next month's Cyberspace Law newsletter? Email Tom Kierner with your blurb! Have a longer or less Cyberspace-y contribution? It might be a good fit for Business Law Today. Email Juliet Moringiello and she will help you with the submission process.