Message from the Chair

Dear Cyberspace Colleagues:

Spring has finally arrived in the Midwest, a few weeks after a very informative, fun Spring Meeting in Orlando. A big thank you to all who helped plan programs and subcommittee meetings for that event. If you missed the meeting, you can still access materials:

- The slide decks from Lisa Lifshitz's presentation on "New Mandatory Data Breach Requirements under Canada's Federal Privacy Act" and Tom Capezza's presentation on "New York State Department of Financial Services Cybersecurity Requirements for Financial Services Companies" are available on our Cyberspace Law website. Look under Recent Program Documents.
- CLE supporting materials are on the Spring Meeting materials page for all CLE programs, including those our committee sponsored:
  - "Cyberinsurance: Coverage, Claims and Cross-Border Concerns" - chaired by John Black
  - "Legal Issues Arising from the Use of AI to Provide Financial Services" - chaired by Steve Middlebrook"
  - "What's Lurking Back There: Cybersecurity Risks in Legacy Systems" - chaired by Tsui Ng

We will let you know when the audio recordings of the CLE programs become available.

If you have a great idea for a CLE program for the 2018 Annual Meeting in Austin, Texas, please submit that to Ed Morse by May 11. See below for more information on what is required. We are always interested in receiving proposals from new and longstanding members of our committee.

Planning is also under way already for the 2019 Cyberspace Law Institute and Winter Working Meeting. Thank you to attendees at our full committee meeting in Orlando who completed the survey about your preferences. We will be announcing the location and dates soon. Remember that presentation materials from our 2018 Cyberspace Law Institute are also accessible if you could not attend the Atlanta meeting.

While you enjoy many benefits from attending our three big meetings each year, please remember there are other ways to get involved if your travel budget is limited - ways to get published, participate on webinars, collaborate with cyberspace colleagues across the country and world, and take on leadership roles. Let Cheryl Burtzel or me know how you would like to contribute to the committee's good work.

Regards,

Cheryl Dancey Balough
Chair, Cyberspace Law Committee

CLE Program Submission - Annual Meeting
Even though the Spring meeting may still be looming large in the rear-view mirror, it is time to look ahead to plan for our next meeting. The Annual meeting will be held September 13-15, 2018, at the Fairmont Austin and the Austin Convention Center in Austin, TX. We expect to continue our Cyberspace Law Committee’s tradition of providing high quality, cutting-edge programming. But we need your help - and we need it soon!

We need to receive your CLE program proposals by **Friday, May 11**. Proposals should include the following information:

- Proposed title
- Program chair(s)
- Program materials chair
- Description of key topics to be addressed
- Potential panelists (which can reflect positions rather than names)
- Co-sponsorship potential
- Proposed length (60, 90, or 120 minutes).

Please send proposals via email with copies to each of us below. We will review your proposals and finalize submissions on behalf of our committee by May 16. If you have questions, feel free to contact us! Thanks for your cooperation.

Cheryl Burtzel
Vice-Chair
cburtzel@dwmrlaw.com

Ed Morse
Program Chair
morse@creighton.edu

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**Subcommittee News**

**From the Cloud & Enterprise Technology Subcommittee**

As you know from earlier newsletters, the Subcommittee is working on a book tentatively titled *Director's Handbook - Enterprise Technology*. There are a few ways to participate in this project: write a chapter, facilitate outreach to potential readers to solicit feedback on approach and content, or provide comments as a peer reviewer. We encourage you to participate in one of these roles.

We are including with this post the current draft of the book outline. We expect chapters to be short (5-8 pages) and provide practical guidance for individuals who serve as corporate directors and lawyers who counsel them. We have not fixed a timeline for publication, but we would like to have a substantial draft of completed chapters by the Annual Meeting in September. If you would like to write or contribute research to a chapter, please let Candace Jones or Isvara Wilson know which material you would like to cover. Alternatives would be helpful in case we have multiple volunteers for the same material.

The outreach exercise is new for us. We envision providing the outline and a sample chapter that members can use to solicit feedback from colleagues who counsel and clients who serve as directors. This exercise might be a good opportunity to talk with your corporate clients about how they manage technology issues with their boards. Please let us know if you are interested in this role.

Also, if you are interested in the work of the Subcommittee, please sign up as a [Subcommittee member on the ABA website](http://aba/). There is no charge to join Subcommittees.

[Click here to view the book outline draft.](http://aba/).
From the Consumer Privacy and Data Analytics Subcommittee

The Consumer Privacy and Data Analytics Subcommittee has launched a project to develop a checklist of legal issues that should be considered when advising organizations that make use of personal data. The geographical scope of the project is global. We have divided up the work by geographical region, and have a participant who is taking the lead in each region: U.S. federal, U.S. states, Canada, European Union, Eastern Europe and Asia, Africa, and Latin America. There is room for additional volunteers to contribute to the work in each of these regions.

We believe that the Privacy Checklist will be of great value to lawyers whose work brings them into contact with privacy issues—a group that is expanding with each passing day. If you would like to participate in this project, please contact either John Isaza or John Rothchild.

From the Current Law Task Force

Current Law Task Force Meeting - 5/16

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 May 16 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 Cross-Border E-Commerce Subcommittee

The Cross-border e-Commerce Subcommittee met in Orlando to discuss current and future work of the group. Two immediate points of interest were raised:

- The meeting the following week of the UNCITRAL Working Group on Electronic Commerce, which would be reviewing legal policy issues relating to international (and domestic) cloud computing, and also identity management, including trust services.
- The recent proposal from the UN Committee on Trade Facilitation (CEFACT) for a convention on international trust networks. This proposal has arisen out of similar work at the UN Economic Committee for the Asia/Pacific. The subcommittee considered whether the approach would have enough traction internationally to be worth paying attention to, and what kind of alternative approaches might be developed.

Both these matters will be discussed on one or more conference calls of the subcommittee (usually joined by experts from the Section of Science and Technology) in May. Notices are sent to the Subcommittee's mailing list. More
From the Smart Contracts and Blockchain Subcommittee

At the Spring Meeting, the Smart Contracts and Blockchain subcommittee had a lively discussion about the nomenclature of blockchain technology, the legal issues most likely to face practitioners and some of the interesting use cases. We will repeat this every time we get the chance: smart contracts are not contracts. If they were, we would not be hearing about a new creature now called "smart legal contracts." To give you some of the highlights of our meeting, we discussed: the risks to privacy in that data on blockchain is typically only pseudonymous, not anonymous; the importance of the human role in off-line permissioning; the difference between forking the software and forking the blockchain; new crypto currencies on Ethereum; solving the scalability problem; and the mess being created by states as they pass new laws to encourage blockchain businesses.

We are proposing a program for the Business Section Annual Meeting in Austin that would focus on the terminology and nomenclature of distributed ledger technology and smart contracts, would describe use cases for smart contracts and summarize a hit list of legal issues raised by the new technology. As a title, we are thinking: "Smart Contracts Are Not Contracts: Blockchain, Smart Contracts and Virtual Currency for the General Business Practitioner." We have ideas as to possible presenters, but we welcome your input. We would also like volunteers who would undertake to draft whitepapers or prepare webinars on our topic.

New Rules for Mandatory Privacy Breach Notification in Canada: What Organizations Need to Know

On April 18, 2018, the final regulations relating to the mandatory reporting of privacy breaches under Canada's Personal Information Protection and Electronic Documents Act ("PIPEDA") were published. These regulations, which include fines of up to CAD$100,000 for noncompliance, will come into force on November 1, 2018.

Why should organizations pay careful attention to this legislative update? To date, much of the Canadian private sector has not been subject to mandatory privacy breach notification. With the exception of Alberta, data breach reporting under PIPEDA has been voluntary for private sector organizations across Canada. However, the recent amendments to PIPEDA and its regulations (the "Regulations") will mean that private sector organizations (except those in the provinces of British Columbia and Quebec) will soon face mandatory breach reporting and recordkeeping requirements, which will require organizations to revise internal privacy policies and procedures to ensure compliance with these significant legislative changes.

Read more...

FTC Files Suit Against Lending Club Alleging Deceptive Practices

On April 25th, 2018, the FTC filed suit against marketplace lender and FinTech star LendingClub alleging the company engaged in unfair and deceptive practices and other violations of law. Among its claims, the FTC alleges that despite prominently advertising that LendingClub has "no hidden fees," the company did in fact charge hidden fees. In particular, the agency notes that the Lending Club
only discloses its origination fee in a pop-up balloon which appears only when the consumer clicks on a little question mark next to the term "APR" on the website. The FTC asserts that such a disclosure is not "clear and conspicuous" and thus is deceptive. Given that lots of online service providers disclose terms and conditions in pop-up balloons that appear when a user mouses over or clicks on a symbol, this case could have significant implications for the FinTech industry.

Read the FTC Press Release here.

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.