

**The Florida Bar
Business Law Section
Computer and Technology Law Committee**

MINUTES OF MEETING – January 10, 2013

Call to Order: Chairman Kevin Levy welcomed the committee via telephone. Larry Kunin ran the Meeting live.

Attendees and introductions: Present were Larry Kunin, Sam Lewis, Ury Fischer, Michel Weisz, Daniel Whitehouse, Donna Chesteen, Keith Knouse, Robert Kais, Kimea Major-Morris, Leslie Evans, Kyle Kennelly, Joel Rothman, Dineen Wasyluk, Steph Nagin, Bill Van Nortwick, and Kim Bursum. On the phone were Kevin Levy, Jerrod Strauss (Asst. US attorney), and Jim Meadows in Panama City.

Sign-in: Committee's email list was circulated. Emails need to be updated, not for Listserv, but for the Business Law Section Records.

Listserv: Anyone who is not on the listserv but wants to be should contact Kevin Levy or Sam Lewis.

Minutes: September, 2012 meeting Minutes passed.

Welcome by Business Law Section Leadership: Brian Gart (Chair) and Steph Nagin (Chair elect) visited the Committee. Brian encouraged members to attend luncheon with speaker on use of social media by lawyers.

Legislative: Bill Wiley, Section Lobbyist, gave legislative update.

Task Force Reports:

Articles: Robert Kain published article on CFAA in the Florida Bar Journal.

CFAA/Employee Hacker Committee: Robert Kain gave report. The Committee has had four conference calls, and progress is being made analyzing statutes across the United States that address the issue with employee hackers.

Legislative report: Larry Kunin, sub-chair. The report is essentially complete between the report of Bill Wiley and Robert Kain. The initiative by Hal Litchford to amend the restrictive covenants statute is presently inactive and appears to be going no further.

CLE – Larry Kunin will give presentation at Labor Day retreat. Looking for speaker for June meeting. Given passage of new rules, Doug Cherry is leading CLE on e-discovery to be included in Presidential Showcase. Many members of the CTLC will be speakers.

Hot Topics:

Larry Kunin reported on new Florida Advisory Opinion adopted by Board of Governors that clarifies that legal staff may e-file for attorneys.

Robert Kain reported on the following:

Divided Patent Infringement - Knowledge Is Inducement To Infringe

Akamai Technologies, Inc. v. Limelight Networks, Inc., combined with McKesson Technologies, Inc. v. Epic Systems Corp., 692 F.3d 1301 (Fed. Cir. 2012)

The problem of divided infringement between two or more parties is solved if the party orders another to do a certain act or induces the conduct and if he knows or should have known of circumstances that would make the conduct tortious infringement if it were his own. Akamai Technologies, Inc. v. Limelight Networks, Inc., Fed. Cir., No. 2009-1372 combined with McKesson Technologies, Inc. v. Epic Systems Corp., Fed. Cir., No. 2010-1291, 8/31/2012 (en banc) (Fed. Cir. Aug. 31, 2012).

Email Left on Server Is Not Back-up Copy Under The Stored Communications Act

Jennings v. Jennings, 2012 S.C. LEXIS 204 (S. Car. 2012)

The South Carolina Supreme Court ruled that a hacker who, without authority, accessed and downloaded email left on a Yahoo email server, did not violate the federal Stored Communications Act (SCA), 18 U.S.C. §§ 2701-2712, because the Yahoo server copy was not a backup copy for the email. Jennings v. Jennings, Case No. 27177 (S.Car. Oct. 10, 2012). This state court decision, construing federal law, again highlights the point that criminal statutes, overlaid with civil remedies, provide uncertain relief to an injured party.

The Court did not seem to appreciate that when email is delivered to a recipient, that the email data packet (the email text, the sender's name, the date sent, the recipient's name, and the delivered date) is altered by a marker that the email was delivered.

Diversity: Diversity Committee is meeting same time as CTLC and no report is available.

Joint E-Discovery: Doug Cherry, sub-chair. Rules have passed, and effort now turns to education, including lawyers and judges.

Recruitment: Kevin Levy. Discussed the continuing need to recruit members.

Announcements:

- The CTLC is in need of a nomination for the next Vice Chair. Interested persons should contact Kevin or Larry.

- Keith Knouse made announcement regarding IAPP, the International Association of Privacy Professionals, Orlando Chapter.
- The next meeting is during the Annual Florida Bar Meeting in Boca in June 2013.

The meeting was adjourned.