

BUSINESS LAW SECTION OF THE FLORIDA BAR
COMPUTER AND TECHNOLOGY LAW COMMITTEE
MEETING MINUTES June 26, 2014

Date: June 26, 2014

Place: Florida Bar Annual Meeting, Gaylord Palms

Larry Kunin, Chair

Robert Kain, Vice Chair

The meeting was called to order by the Chair. Attendance was taken and introductions were made by those attending. Upon motion of Darren Spielman and Sam Lewis, the minutes for the January 2014 and the September 2013 meetings were approved.

1. Taskforce Reports

A. Articles – Matthew Horowitz made a call for articles from the membership.

B. CADRA – Robert Kain discussed the proposed, revised version of the Computer Abuse and Data Recovery Act (CADRA). After a brief discussion of the underlying reasons for the new legislation, Kain updated the Computer and Technology Law Committee (herein CTLC) regarding the process of review and revision and the significant changes made to CADRA. A small task force of the IP Committee, the CTLC and the Business Litigation Committee (herein BLC) was formed (Kain, Jim Murphy, Andrew Ostrow, Ury Fischer, Sam Lewis, Russell Landy, Jude Cooper) in order to simplify and compress the earlier version of CADRA that was approved by the IP Committee in January 2014.

Kain reported that the earlier version of CADRA was not well received by BLC and that to move the legislation forward, it was necessary to have the support of the BLC. If the BLC, the IP Committee and the CTLC all approved CADRA, then there is a reasonable probability that the Executive Committee of the Business Law Section would approve CADRA. Thereafter, the Business Law Section may lobby the Florida Legislature to pass CADRA.

Kain then explained the revised version of CADRA as being a basic step forward to protect Florida businesses by making it a civil violation to “sell” or “take and use” a password or other “technological access barrier” without authority. The “technological access barrier” (herein “TAB”) is discussed in the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 1201(a)(2)(A), which prohibits, in relevant part, the trafficking of any technology that “is primarily designed or produced for the purpose of circumventing a technological measure that effectively controls access to a work protected [by copyright].” *United States v. Reichert*, 747 F.3d 445 (6th Cir. 2014)(see also CADRA version June 13, 2014, footnote 3, for cases). CADRA defines “without authority”, as those persons who are not assigned or given the TAB by the business owner.

Kain reported that the BLC and the IP Committee had favorably received the current version of CADRA at the June 2014 meeting. Kain suggested that all three Committees finally vote on CADRA at the September 2014 Retreat. A CADRA white paper will be circulated prior

to the Retreat. Comments will be solicited on the CADRA white Paper prior to August 2014.

C. CLE – Chairperson Kunin introduced Donna Chesteen who presented a CLE on – Developing a Narrative for Data Breach. Approximately 1 hour was devoted to the CLE.

D. “Hot” computer and technology law topics - Vice-chair Kain submitted his Hot Topic paper prior to the CTLC meeting.

E. Joint e-Discovery - Doug Cherry, chair e-Discovery Committee, noted that the e-Discovery CLE was to be presented June 27. Also, proposed ESI Protocols for electronically stored information are posted on the Business Section website. The e-Discovery Committee is reviewing the ESI Protocols.

F. Legislative – Robert Kain and Larry Kunin: Section Lobbyist Aimee Diaz reported that (1) to move CADRA forward, the legislation needs Section approvals by the September 2014 meeting and (2) the Florida Legislature will move forward on a Business Identity Theft (herein “BIT”) law this next sessions. Diaz asked for assistance on the BIT. Joel Rothman said that the CTLC should look to the website BusinessIDTheft.com for guidance. Rothman also said that Mr. Browning at the Florida Secretary of State was listed on this website as the prime contact for Florida.

Ms. Diaz thanked the CTLC for their input on: (1) the revisions to Florida’s Computer Crimes Act (and also specifically mentioned Kain and Kunin)(bill passed); (2) the Booking Photograph law (not passed); (3) Social Media Privacy (not passed due to opposition by major companies); and (4) Application of Foreign Law in Certain Cases (a report was given that this law would be re-introduced in 2014-2015 and CTLC should try to work to mitigate the effect on businesses).

G. Recruitment – Chair Larry Kunin asked members to speak up to other Florida Bar members about the CTLC.

6. Old Business - nothing of note

7. New Business - The Legislative Committee asked that CTLC re-approve its support of Florida’s Revised Model Trademark Act, Ch. 495 at the September 2014 meeting. Otherwise, the Legislature may sunset the Act.

8. Adjournment - The next Committee meeting will be during Labor Day Retreat, Ritz-Carlton, Naples, Aug. 29 – Sept. 1, 2014.

/s/RobertKain, vice chair