

The Florida Bar - Business Law Section

Computer and Technology Law Committee

MINUTES OF MEETING – September 1, 2012

Call to Order: Chairman Kevin Levy welcomed the Committee.

Attendance: 35 attendees, including 6 law students.

Welcome Remarks and Introductions: Wayne Thorpe of JAMS was introduced and JAMS thanked by the committee for being a sponsor of the Business Law Retreat. Later Carol Cope and Gerald Cope were also welcomed to the committee meeting.

Approval of minutes: Minutes from June 21, 2012 were approved.

Listserv: Remember there are multiple listservs, and if a person is a member of the Business Law Section (“BLS”), the person can be on any BLS committee listserv.

Taskforce Reports:

Articles:

Two articles submitted by committee members. One article on privacy issues, by Steph Nagin, Chair-Elect of the BLS, might be published in the Florida Bar Journal.

Bob Kain has drafted a detailed report (circulated to the committee) on the conflict in the U.S. Federal Circuits regarding what is exceeding authorized access as defined and intended by the Computer Fraud and Abuse Act (“CFAA”).

If anyone wants to draft an article, do so, there are rolling deadlines, and a draft can be circulated around the committee for review and comment.

Hot topics: Report by Robert Kain

Federal Circuit, which hears most patent appeals, has taken a significant step. The patent office has been approving computer patents that are methods that operate solely on a computer (pure software). In *Bancorp*, the Fed Circuit invalidated an insurance product that was method claim. It was a 6 or 8 step patent. The court held that if the process can be done manually, then it is not patentable matter. This insurance product monitored stock value and made sure it matched value of insurance. This decision could invalidate many Wall Street software product patents. Part of holding is that if you cannot patent as a method, then you cannot patent as a system.

CFAA: Further to Robert Kain's report referenced above, the CFAA is a criminal statute that has civil component to it. The issue in controversy is when an employee has rightful access to an employer's computer, but the employee then takes information, resigns, goes to a competitor, and then uses the acquired information for the competitor. Many courts call this person an employee-hacker. CFAA applies where a person exceeds authorized access. Some circuits have ruled that this does not violate CFAA because the employee was authorized to access to the computer. But other circuits said that the employee hacker has violated CFAA. The Florida Computer Crimes Act is non-functional because it applies on the civil side only if there is a conviction.

Question for committee, do we want to look at "unauthorized" access or misuse of a computer to which an employee may have authorized access solely for the employer's benefit?

- Joel Rothman previously drafted amendments to 772.11 (Civil Theft) to add computer protection.

- Chair Kevin Levy appointed a subcommittee to look into potential amendments to existing laws to add computer protection, or possibly the drafting of a new law. The committee is: Bob Kain, Larry Kunin, Joel Rothman, Jeremy Susac, Debbie Campbell, Ury Fisher, Mark Stein, Tim Morell, Sam Lewis, Dineed Wasylik, and Doug Cherry.

Proposed Amendments to § 542.335 (restrictive covenants): Chair of sub-committee Sam Lewis summarized his sub-committee's report recommending that no amendments be made to the statute. The Computer Law Committee voted to adopt the subcommittee report and recommendation not to support any amendments. There was 1 abstention.

Joint E-Discovery: Doug Cherry reported that that the sub-committee has a good meeting, and might become standing committee. The new e-discovery rules are great, and it is now time to turn to education. If anyone is interested, see Doug Cherry or Steve Tepler. This will include working on educating judges, affiliations with students, and motion to compel practice.

Diversity: Every committee needs a representative to the BLS Diversity Committee. Debbie Campbell volunteered to serve as the Computer Law Committee representative.

Legislative: Other than the subcommittee report regarding potential amendments to §542.335, there were no issues raised in the Legislative Committee relevant to computer and/or technology law.

Recruitment: Kevin Levy reported recruitment for the Committee continues to progress forward with positive momentum, including an emphasis on law school students and new recently admitted attorneys.

CLE: Kevin Levy presented “The Cloud – Risk from the Legal Perspective,” Florida Bar Course number 10313.

Old Business: None to report.

New Business: No additional new business.

Closing: Next Committee Meeting is during the BLS Midyear meeting in January in Orlando.