



Law and Business Tech: Cybersecurity, Blockchain and Electronic Transactions

(Revised Aug. 30, 2018)

Continuing Legal Education presented by
The University of Tennessee College of Law

Sept. 21, 2018
8: 30 a.m. – 4 p.m.

Overview

This conference brings together representatives from the business world, the cybersecurity field, and the legal profession to provide advice and guidance to attorneys and non-lawyer professionals regarding current law and technology issues impacting businesses today.

The conference has been approved for 6 hours of CLE credit, with attendees having the option to receive 1 hour of dual credit.

Session 1: Cybersecurity and Data Privacy Update (CLE: 2 hours of general credit)

Today, every government agency, business and individual in our society is susceptible to the risks of cyberattack and data loss. As a result, lawyers and business professionals may no longer ignore this area of risk management and must stay informed as to cybersecurity developments and their implications for enterprise and information technology management, including technology infrastructure assessment and audits, data breach prevention, compliance with best practices, regulatory compliance, and data breach response notification and reporting. This panel will discuss how lawyers and business professionals can effectively navigate the complex cyber landscape with strategies designed to assess current risks, develop corrective action plans, implement best practices, and provide immediate and appropriate responses to cybersecurity breaches.

Session 1 Speakers

The speakers are a combination of academics, practicing lawyers, and other professionals, all of whom routinely deal with cybersecurity issues.

Jennifer Bolling: Jennifer Bolling is the Southeast Area Director, Cyber Liability Insurance & Risk Management with Arthur J. Gallagher & Co. She specializes in management and professional liability insurance with a concentration in cyber liability, directors & officers liability, employment practices liability and errors & omissions liability. Jennifer has over 10 years of experience in professional lines brokerage placements.

Jason Asbury: Jason Asbury is president of ThreatAdvice, a Birmingham, Alabama-based provider of cybersecurity education and awareness. ThreatAdvice was founded in 2016 to provide companies of all types with comprehensive cybersecurity protection by offering tools to educate employees on good cyber practices, help identify and respond to an attack, simulate cyberattacks, and insure against potential attacks. Asbury has two decades of experience providing consulting services and managing projects for clients in banking, insurance, education and law.

Kris Torgerson: Kris Torgerson is the Director of the Information Technology Services Division at Oak Ridge National Laboratory.

India Vincent: India Vincent is a partner and Chief Privacy Officer for Burr Forman. She chairs the firm's Intellectual Property and Cybersecurity Practice Group, and actively participates in the firm's Corporate Transactions Group as well as the Blockchain, Cryptocurrency and Electronic Transactions focus team.

Her areas of practice include cybersecurity, data privacy, GDPR, technology, corporate transactions, block chain and intellectual property.

Amanda Swenty (moderator): Amanda Swenty holds an LL.M. in International Telecommunications and Information Technology Law, specializing in data privacy and electronic commerce from the Norwegian Research Institute for Computers and Law of the University of Oslo. She recently completed a fellowship at George Mason University's Antonin Scalia Law School's National Security Institute. Prior to that, she served two decades in various positions throughout the federal government, advising the law enforcement, military, and intelligence communities in addition to serving two administrations as a Deputy Legal Adviser to the National Security Council. She has provided legal guidance on substantive topics such as Cybersecurity, Cybercrime, Covert Action, Intelligence Collection, Military Operations, and Information Sharing. She will teach National Security Law and Cybersecurity Law & Policy at the University of Tennessee College of Law.

Session 2: The Coming Second Wave of Digital and other Electronic Signatures in Commerce (CLE: 1 hour of general credit)

While the electronic signatures of consenting parties to business transactions have been legally valid since the passage of the federal Electronic Signatures in Global and National Commerce Act (ESIGN) and the contemporaneous and widespread adoption by the states of the Uniform Electronic Transactions Act (UETA) in the late 1990s and early 2000s, unlike their consumer counterparts, parties to large commercial transactions have been reluctant until recently to embrace e-signatures as a part of the closing process. Add to emerging acceptance of e-signatures in commercial transactions the current surge of blockchain and smart contract use cases that require digital signatures (a subcategory of electronic signatures) as an integral part of their underlying distributed ledger technology, it is now necessary for lawyers and other business professionals to understand the legal and technological issues relating to e-signatures and e-transactions. This panel presentation will explore such legal and technological issues.

Session 2 Speakers

The speakers on this panel consist of an attorney who practices in this area and has presented on the topic at CLE presentations and the executive vice president of a digital signature company.

Pam Guerry: Pam Guerry is Executive Vice President of SIGNiX, a cloud-based, digital signature solution designed to make online document signing safe, secure, and easy. Previously, he served as Assistant Commissioner of Finance and Administration for the State of Tennessee under Commissioner Bob Corker, with responsibilities including management of the state's overall technology resources. Other positions include President of RiverValley Partners and of World Healthcare Systems. He earned his BA from Southern Methodist University and an MBA from The Wharton Business School.

Ed Snow: Ed Snow is a partner in the Atlanta office of Burr Forman in the firm's Lending Practice Group. He has practiced law since 1988 and is admitted to practice in Georgia, Maryland and Tennessee. He represents banks, finance companies, funds and borrowers in the middle and large corporate markets and his clients include: Wells Fargo Bank, JPMorgan Chase Bank, BB&T, Regions Bank, Atlantic Capital Bank, Synovus Bank, First Citizens Bank, Chatham Capital and MidCap Financial Services, among others. Ed is also a member of the firm's Blockchain, Cryptocurrency and Electronic Transactions Group and advises banks, financial institutions and other businesses in these areas, including regarding blockchain financial transaction applications, electronic and digital signatures, electronic loan documents and other contracts (aka, electronic records) and collateral consisting of electronic chattel paper, transferable records and other electronic assets. Ed is a frequent speaker and author on these topics and is a member of The Electronic Signatures and Records Association.

Joan Heminway (moderator): Professor Heminway joined the UT Law faculty in 2000. She practiced transactional business law (working in the areas of public offerings, private placements, mergers, acquisitions, dispositions, and restructurings) in the Boston office of Skadden, Arps, Slate, Meagher & Flom LLP from 1985 through 2000. She has served as an expert witness and consultant on corporate finance and federal and state securities law matters and is a frequent academic and continuing legal education presenter on business law issues. In her research and writing, Professor Heminway focuses most closely on disclosure regulation and policy under federal securities (including insider trading) law and state entity (especially corporate) law.

Session 3: Pricing Algorithms and Collusion
(CLE: Concurrent Session A – 1 hour of general credit)

The development of self-learning and independent computers has long captured our imagination. The HAL 9000 computer, in the 1968 film, *2001: A Space Odyssey*, for example, assured, “I am putting myself to the fullest possible use, which is all I think that any conscious entity can ever hope to do.” Machine learning raises many challenging legal and ethical questions as to the relationship between man and machine, humans’ control -- or lack of it -- over machines, and accountability for machine activities.

While these issues have long captivated our interest, few would envision the day when these developments (and the legal and ethical challenges raised by them) would become an antitrust issue. Sophisticated computers are central to the competitiveness of present and future markets. With the accelerating development of AI, they are set to change the competitive landscape and the nature of competitive restraints. As pricing mechanisms shift to computer pricing algorithms, so too will the types of collusion. We are shifting from the world where executives expressly collude in smoke-filled hotel rooms to a world where pricing algorithms continually monitor and adjust to each other’s prices and market data.

Concurrent Session A Speaker

Professor Maurice Stucke will address these developments and consider the application of competition law to algorithmic pricing, several scenarios where AI can foster anticompetitive collusion, and the legal and ethical challenges that arise.

Maurice Stucke: Professor of Law Stucke joined the UT College of Law faculty in 2007. He previously served as a trial attorney at the U.S. Department of Justice, Antitrust Division. He has co-authored two books, *Big Data and Competition Policy* (Oxford University Press 2016) and *Virtual Competition* (Harvard University Press 2016). His research on the digital economy has been featured in *The Economist*, *Guardian*, *Harvard Business Review*, *New York Review of Books*, *New Yorker*, *New York Times*, *Science*, *Times Higher Education*, *Wall Street Journal*, *Wharton Business Radio*, and *Wired*. He was invited by the OECD and governmental authorities from Canada, the European Union, Ireland, Italy, the Netherlands, Norway, South Korea, United States, and United Kingdom to discuss his research.

**Session 3: Legal Ethics Issues Involving Technology in the Practice of Law
(CLE: Concurrent Session B - 1 hour of dual credit)**

This session will address current legal ethics issues involving the use of technology in the practice of law. Topics will include new ABA and state ethics opinions concerning technology as it relates to the ethical duty of competence; client confidentiality issues related to technology, including cybersecurity and inadvertent disclosure of client information; and how the increasing use of artificial intelligence is shaping the practice of law and the ethical issues involved.

Concurrent Session B Speakers

The speakers on this panel all teach and write in the areas of professional responsibility and the future of the legal profession.

Alex Long: Professor Alex Long is Associate Dean for Academic Affairs & the Doug Blaze Distinguished Professor of Law at the University of Tennessee College of Law, where he teaches Professional Responsibility. He has published numerous articles on legal ethics issues and is the co-author a casebook on the subject. He regularly presents on professional responsibility topics at CLE events and contributes a semi-monthly column on legal ethics for *Dicta*, the Knoxville Bar Association magazine.

Paula Schaefer: Professor Paula Schaefer regularly writes and teaches in the field of legal ethics and e-discovery. She is currently Treasurer of the Professional Responsibility section of the American Association of Law Schools (AALS). She is the co-author a casebook on legal ethics and regularly presents on professional responsibility topics at CLE events. Along with two of her colleagues at UT, she contributes a column on legal ethics for *Dicta*, the Knoxville Bar Association magazine.

Session 4: Legal Issues Surrounding Blockchain and Cryptocurrency/Bitcoin (CLE: 2 hours of general credit)

In spite of the hype in recent news articles suggesting blockchain technology may, for instance, end world poverty, it seems clear that the distributed ledger technology (DLT) that undergirds Bitcoin will continue to be repurposed toward commercial transactions and other uses that will allow companies to conduct old-fashioned business in new, innovative and disruptive ways. Lawyers and other business professionals must understand DLT's accompanying risks and emerging regulatory landscape in order to navigate this new environment. Whether companies should implement a blockchain application, or whether they should issue cryptocurrency tokens to raise capital or purchase cryptocurrency tokens as an investment, are all complicated legal and business questions which this panel will address.

Session 4 Speakers

The speakers are a combination of academics, practicing lawyers, and other professionals, all of whom routinely deal with cybersecurity issues.

Joshua A. Ehrenfeld: Joshua A. Ehrenfeld is a partner in the Nashville office of Burr Forman. He is a member of the firm's Corporate and Tax Practice Group with a focus on domestic and international taxation, mergers & acquisitions, venture capital, early-stage and start-up companies, private equity and corporate finance. He advises clients worldwide on a wide-range of domestic and cross-border transactional and business-related issues. He is also a member of the firm's Blockchain, Cryptocurrency and Electronic Transactions Group and advises businesses on a variety of matters relating to the use, incorporation and impact of blockchain technology, as well as the issuance and utilization of cryptocurrencies.

Ryan Gallagher: Ryan is a law student at the University of Tennessee College of Law and co-founder of Tynewoods Blockchain, LLC, which provides practical instruction regarding Blockchain. Ryan left the U.S. Navy to study law and cybersecurity. He is set to graduate in December 2018.

Matthew Lyon: Lyon is the associate dean for academic affairs and a professor of law at Lincoln Memorial University Duncan School of Law in Knoxville. He teaches business organizations, contracts, civil procedure, and payment systems. His scholarship is focused on business law and civil litigation. His article on the Trump Administration's regulatory response to blockchain technology and cryptocurrencies will appear in a forthcoming issue of the Mercer Law Review. Before entering academia, Lyon served as the senior judicial clerk to Justice Gary R. Wade of the Tennessee Supreme Court and was a commercial litigation associate at Sidley Austin LLP in Chicago.

Thomas K Potter: Tom Potter is a partner in the Nashville office of Burr Forman with over 30 years experience representing business interests in securities, corporate and intellectual property disputes. Tom is an author and speaker on a number of legal matters. He is also a frequent contributor to Burr's Securities Litigation Blog. He is also a member of the firm's Blockchain, Cryptocurrency and Electronic Transactions Group.

Josh Rosenblatt: Josh Rosenblatt is Senior Vice President of Development and General Counsel for BTC, Inc. in Nashville, a media group and information source for cryptocurrency and blockchain technology. Prior to joining BTC Inc, Rosenblatt spent the past three years as an attorney and co-chair of the

blockchain and cryptocurrency practice at Frost Brown Todd, where his work focused on financial technology, mergers and acquisitions, securities and other liquidity events.

Gary Pulsinelli (moderator): Professor Gary Pulsinelli joined the faculty at the University of Tennessee College of Law in August 2001. He writes and teaches in the area of intellectual property law. He earned his J.D. degree at Boalt Hall School of Law at the University of California-Berkeley in 1997, where he was elected to the Order of the Coif. Prior to attending law school, he earned his Ph.D. in molecular biology from the University of Wisconsin-Madison in 1994, then continued his doctoral research as a post-doctoral fellow in the Department of Oncology.