

Cyberlaw: an area of law for all of us

By John Bandler, Esq., Bandler Law Firm PLLC

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Cyberlaw is everywhere so no lawyer can ignore it or pretend it doesn't apply to them. Let's embrace it and analyze how law intersects with technology.

Cyberlaw is a term that means different things to different people, let's first break it down into its components.

Cyberlaw = cyber + law

This helps a little, now let's examine each word.

Law

Law is our system of rules for how to conduct ourselves: what to do and not, plus rules for how to resolve a dispute — when one party claims another did not conduct themselves properly. Law also includes rules for our system of government and democracy, since we are a nation of laws.

We live in the cyberage so we need cyberlaw and to consider what that term means.

Law has a long tradition and continuing evolution, and the cyber age is a relatively recent development.

Cyber

Cyber is a ubiquitous term that applies to anything relating to the digital world: to computers, networks, and digital data.

We have added cyber to many other words to make cybercrime, cybersecurity, cyberattack, cyberconflict, cyberbullying, cyberspace and even naming certain vehicles with it. Perhaps "cyber" comes from the term "cybernetics" relating to feedback systems, but now it has its own meaning.

Cyberspace

Cyberspace is also a term in the eye of the beholder, subject to varied understandings.

Before envisioning what that means, let's first think about our traditional spaces that existed before computers and the internet. The spaces we lived in before cyber arrived and started to consume everything. Imagine living life without a smartphone, tablet, or laptop computer you could carry with you. Now imagine not even having a personal computer on a desk in the home or office.

Now return back to reality of the present and think about everything that is in our lives and the spaces we inhabit and interact with. We realize that digital devices, data, and connectivity are everywhere, and we are now thoroughly enmeshed with cyber. We live in a cyberspace and cannot escape it.

Only from our illusory personal perspective can we escape the cyberworld for a short period of time. The world continues with its reliance upon cyber, whether we realize it or not, like it or not.

Because the world continues this way, law does too. People's actions always involve cyber, and that means the disputes around those actions will also relate to cyber.

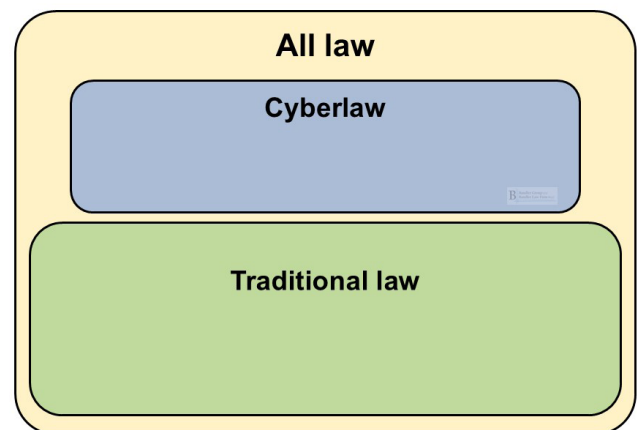
Cyberlaw

We live in the cyberage so we need cyberlaw and to consider what that term means. There are different ways to think about it.

Law is generally a process of adding and evolving with new case decisions and new statutes and regulations. Occasionally a new statute reverses the old, or a new court decision reverses old precedent, but mostly we continue forward one event at a time.

Humans gradually adopted and adapted to new technologies, and so does the law with each new fact pattern, decision, and statute. All things cyber gradually become a part of law.

Under this analogy, cyberlaw gets built upon the existing "traditional" law, brick by brick, floor by floor, as depicted in this diagram.



Cyberlaw sits on a foundation of traditional law

Courtesy and copyright John Bandler from his forthcoming book: Cyberlaw: Law for Digital Spaces and Information Systems

For example, traditional criminal law was added onto as thieves realized they could steal using computers and the internet. Existing laws were applied to this conduct and then new cybercrime specific statutes were enacted.

Negligence law now addresses cyberspace, information systems, software, and many other technology related situations. Every attorney should be familiar with one particular set of circumstances relating to negligence, malpractice, and cybercrime because they should prevent the event in the first place. Attorneys with negligent cybersecurity and cybercrime prevention measures who allow a cybercriminal to steal funds from a client (such as through business email compromise – also known as email-based funds transfer frauds) could face a civil liability claim.

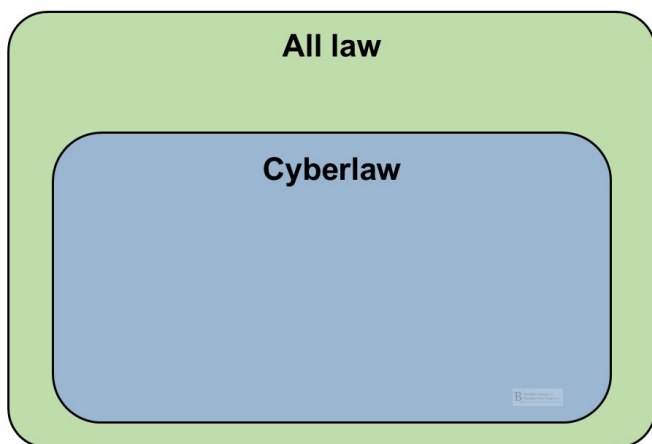
Copyright law adapted as infringers switched from VHS tape duplication to digital copying, trademark law adapted to domain name squatting.

Data laws were created for breach notification, cybersecurity, and privacy. Privacy becomes a heightened concern as data about all of us is collected, shared, sold, and used to target us for marketing, persuasion, influence, and manipulation. Few existing laws could be applied to this, so new laws are being created and updated regularly.

Under the above analogy, we envision a process whereby cyberworld events and cyberlaws get added to what already existed.

This additive analogy is just one way to think about it.

Alternatively, we can ignore the evolution and simply consider what our current reality and system of law looks like today, and how it involves cyber. Actions leading to disputes take place in the digital realm, and the evidence to prove or disprove a claim resides there as well. With that view, cyberlaw is simply a subset of all law, as depicted in this diagram.



Cyberlaw is a subset of all law

Courtesy and copyright John Bandler from his forthcoming book: Cyberlaw: Law for Digital Spaces and Information Systems

Under this analogy, it is still possible to find a legal dispute that does not involve cyber conduct or cyber laws. The concept allows room for differing perceptions and interpretations on how large the

area of cyberlaw should be depicted relative to all law, including whether a digital location of evidence affects whether something falls within the ambit of "cyberlaw".

That arson case, slip-and-fall, or traffic accident may seem traditional (and nowhere near cyber) but considerable evidence about those cases will be found within the digital realm.

Whatever our analogy, they are merely a concept, and they can only go so far. We should budget our time wisely and not spend too much of it debating whether something is "cyberlaw" related or not. The main takeaway is that cyber is everywhere in life and law.

Enough material for a book

You could write a book on the topic of cyberlaw — and I did.

Lawyers already know traditional law, so we simply need to assess how technology has changed the events of our lives and litigation.

We should budget our time wisely and not spend too much of it debating whether something is "cyberlaw" related or not. The main takeaway is that cyber is everywhere in life and law.

Cybercrime is worthy of special attention; theft in a new age, freed of geographic constraints.

Traditional areas of law deserve consideration to see how intentional torts, negligent torts, contract, and intellectual property apply in cyberspace.

Extra review is needed for a new category of law — data law — which covers data breach notification, cybersecurity, privacy, and artificial intelligence implications too.

Then it is time to assess cyberconflict and how countries use cyberspace to advance their own position and undermine others in the global arena.

Finally comes the complex legal and societal issues with speech, expression, thought, and influence in our new cyberworld. The First Amendment allows for a wide degree of expression, and a lone powerless individual can now speak to the world through cyberspace. Realistically, few will hear that. The greater concern is that cyberspeech can be dominated by well-resourced individuals, groups, and countries who now can influence opinion and action on a national and global scale.

Cyberlaw is law for our world today and all the cyberspaces we inhabit. Cyber affects us, persuades us, influences us, and perhaps even manipulates or dominates us. It's worth thinking about.

John Bandler is a regular contributing columnist on cybercrime and cybersecurity for Reuters Legal News and Westlaw Today.

About the author



John Bandler is a lawyer, consultant, author, and adjunct professor at Elisabeth Haub School of Law at Pace University. He helps protect organizations from cybercrime, improve cybersecurity, and better manage information assets. His latest book is “Policies and Procedures for Your Organization” (2024). His firm, based in New York, is **Bandler Law Firm PLLC**, and he can be reached at JohnBandler@JohnBandler.com.

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