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EDITORIAL

STEPPING THROUGH THE LOOKING GLASS

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The greatest challenge that newcomers to the standards world must face is grasping the reality that success is about giving away rights in some technology in order to make money on other technology. This means that those who would form a new consortium must enter into a sort of "through the looking glass" world where patents are impediments rather than tools, royalties are unwanted encumbrances, licenses exist for the sake of disclaiming rights, and collaborating with competitors is as essential as working with partners.

Becoming a productive director in a standard setting organization (SSO) can be a disorienting experience, especially if the responsibilities of that office are fully embraced. The reason is that while the same legal duties apply to an SSO director as control the actions of other corporate directors, many traditional management goals are turned inside out.

At the most basic level, a director of an SSO must shed the conviction that the most important goals of the enterprise are to drive growth, maximize profits, ensure institutional survival, and drive growth. In fact, those goals may or may not be consistent with the actual mission of an SSO at all. This is particularly so for an SSO with a discrete goal, such as developing and promoting a single standard, as compared to an organization with a mandate to develop multiple standards to serve the core needs of an entire technical domain. In the former case, success may be measured by declaring "mission accomplished" as soon as possible, handing off the standard to another SSO for long-term maintenance, and promptly going out of business.

Too often, SSO directors with the best of intentions focus primarily on traditional metrics, quizzing management more on revenue growth and how many press releases have been issued, rather than on numbers of standards completed and (more importantly) broadly adopted. Over time, the culture of such an organization can turn to one of self-preservation, rather than one focused on achievement of its true mission.

Directors of SSOs that are nominated by vendors can find themselves in another, and more awkward position. The conflict arises from the fact that they are expected to wear two hats, and often have a third in their back pocket as well. The first is the conservative homburg of a director in a traditional corporation, which obligates its wearer to observe a duty of loyalty to all owners of the organization. The second is less conservative, and its style is intended to be representative of the member and its peer companies. This is because directors on the boards of many SSOs are expected to express the viewpoint of their employers (large or small, hardware or software, vendor or end-user), thereby acting as a proxy for similarly situated members with similar interests and needs. This is particularly so in SSOs that try to balance their boards in order to ensure that all categories of members are heard, and their needs accommodated.

The virtual ball cap in the back pocket, of course, prominently bears the corporate logo of the director's employer, and it is this factor that creates the tension. The reality in many consortia is that those that pay the most may receive a guaranteed board seat as one of the perks of anteing up for a top-level membership. Sometimes the price for that seat can be quite high. How are the expectations of members that pay such prices to be squared with the legal duties of a director?

The statutory answer is clear – a director's duties trump her employer's directives. In the breach, of course, what actually goes through the mind of an individual director when a question is put to a vote is known to that individual alone.

In fact, this type of conflict need not be as great it may at first appear. An apt analogy can be found at the technical level, where newcomers to the standards world must come to grips with the reality that success in standard setting often requires giving away some proprietary rights in order to make money on others. This means that those who would form a new consortium must enter into a sort of "through the looking glass" world where patents are impediments rather than tools, royalties represent unwanted encumbrances, licenses exist for the sake of disclaiming rights, and collaborating with competitors is as essential as working with partners.

In the technology sector, more and more vendors "get" this concept, resulting in increasing pressure to develop standards that are not only royalty free, but in the case of software, available on terms that are conducive to open source implementation as well. One reality leading to this realization is that we live in an increasingly networked world. In such a place, the biggest wins come from enabling the creation of markets for new products and services that would not be viable absent agreement on enabling standards, and not from the royalties that might be obtained from a single patent, perhaps at the cost of constraining the size of the market itself.

This is the goal on which a director must focus, and not the particular technical outcome that might be somewhat more desirable for her employer, if only the opposition can be maneuvered into the right position to permit win the play to be won.

At the end of the day, the very serious game of standard setting must be played on the other side of the looking glass, and by its own rules. Under those rules, winning must be a team effort – with everyone wearing the same hat.

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