

IEEE 802

Local and Metropolitan Area Network Standards Committee

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Chair, IEEE 802 LMSC

TO: 802 PARTICIPANTS

SUBJECT: INDEMNIFICATION

DATE: 13 JAN 2006

CC:

Dear 802 Member:

As we begin the new year, it is good to remind ourselves of the IEEE's mission: promoting the process of creating, developing, integrating, sharing, and applying knowledge about electro- and information technologies and sciences for the benefit of humanity and the profession. The IEEE-SA carries this mission forward through the development of standards. This is important work that we do, and we have reason to take pride in it.

The IEEE-SA accomplishes its mission through its commitment to a fair and open process. This commitment has become increasingly important with the passage of the Standards Development Organization (SDO) Advancement Act of 2004, because legal protection for the IEEE-SA's work is available under that Act only as long as the IEEE-SA's procedures incorporate attributes of openness, balance of interests, due process, an appeals process, and consensus. The IEEE-SA expects that other contemplated legislative protections for SDOs will require similar procedures. Without those legal protections, the IEEE-SA and participants in the process have far greater legal exposure.

The IEEE-SA wants to make sure that the volunteers who share its commitment are protected from challenges to their conduct within the IEEE standards development process. Toward that end, the IEEE several years ago adopted an indemnification policy. The policy is stated in Bylaw I-300.3, and the IEEE-SA has published a brochure explaining it (available at <http://standards.ieee.org/resources/indem.pdf>). Briefly stated, the policy protects volunteers where the IEEE Board of Directors finds that the volunteers' service was duly authorized, lawful, in good faith, and consistent with the purposes and objectives of IEEE.

One area of concern for SDOs and their participants in recent years has been potential antitrust claims arising from abuse of an SDO's process. The 802 group offered a tutorial at the July 2005 plenary to explain IEEE indemnification policy in the antitrust context, and our legal counsel wanted to make sure that all 802 participants have some sense of how the policy would work in this context. Of course the vast majority of IEEE-SA volunteers demonstrate their commitment to IEEE-SA's operating principles every day, and we have not – yet – had a claim against a volunteer in the standards process where the IEEE Board was required to make a final decision on indemnification. I cannot speak for the IEEE Board of Directors, but if a volunteer in the standards process brings relevant professional training and experience to bear, participates thoughtfully, and acts impartially, in good faith, and without a financial interest in the outcome, and is nonetheless named in an antitrust claim, it would be difficult for me to think of any antitrust claims that could plausibly be brought against them that would not be covered under our policy. Without wishing to focus on the negative, however, here are two examples of conduct that likely would result in denial of any request for indemnification:

- A group representing one proposed technology seeks to dominate a working group. The working group chairman is aligned with that faction. At meetings of the working group, the chair adopts a practice of recognizing only members of that faction and declining to recognize any other speakers. In that circumstance, it is highly unlikely that the IEEE would indemnify the chair. (while IEEE procedures do not require absolute equality of floor time between or among different interests, clearly biasing the proceedings against a particular position is unacceptable).
- A Company hires a consulting firm to ensure that a number of the consulting firm's employees are members of a working group. These employees disclose their affiliation with the consulting firm but do not disclose their affiliation with the Company. These employees do not substantively participate in the working group meetings but attend a sufficient number of meetings to achieve and maintain working group voting rights. The employees cast their votes as directed by the Company that has engaged their consulting firm. It is highly unlikely that the IEEE would indemnify any of these individuals.

I want to thank you and your fellow 802 members for your continuing commitment to the IEEE-SA's fundamental operating principles, and for your contributions to the betterment of humanity and the profession. With best wishes for another successful year in 802, under the oversight of the IEEE-SA.

Best regards,

Paul Nikolich

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