

IEEE 802
Local and Metropolitan Area Network Standards Committee
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To: Jerry Peterson, IEEE-SA President
Jim Carlo, IEEE-SA President elect
Judy Gorman, IEEE-SA Managing Director
Dan Senese, IEEE Executive Director

CC:
IEEE 802 LMSC Executive Committee
Karen Kenney

SUBJECT: Indemnification Policy Concerns

DATE: November 25, 2003

As Chairman of the IEEE P802 LAN MAN Standards Committee (LMSC) I wish to question and express my concern about the IEEE indemnification policy.

In March 2003, the LMSC EC declined to confirm the officers elected by the newly formed 802.20 Working Group. There was an appeal and the Computer Society-Standards Activity Board appeal panel returned the confirmation issue to the LMSC EC for reconsideration. The appeal panel required that in the reconsideration, "Should any officer not be confirmed, the rationale for such action shall be recorded in the minutes..." Therefore I directed those EC members voting not to confirm to state their reasons in writing on their ballot, as that is the only accurate means to record rationale.

Since confirmation of the 802.20 officer elections has been a contentious issue I requested that the IEEE confirm the IEEE indemnification policy as part of the preparation for reconsideration. The following response was received on November 6, 2003 from Judy Gorman in response to this question.

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"From: <j.gorman@ieee.org>  
To: <Paul.nikolich@worldnet.att.net>  
Cc: <k.rupp@ieee.org>; <don@lexmark.com>; <j.carlo@ieee.org>; <ghpeter@ieee.org>;  
<bjohnson@thermon.com>;  
<deese.pamela@dorsey.com>  
Sent: Thursday, November 06, 2003 1:30 PM  
Subject: Indemnification wrt IEEE P802.20 activity
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Paul,
Below please find an answer to your question about indemnification.

The members of the 802 SEC are indemnified as long as they follow the rules. Further, while their discretion and care in how they formulate their rationales are matters of personal preference, if they want to avoid any questions about indemnification, they should probably be very factual and not subjective in the way they craft their rationales. IEEE in the end makes choices about who and how much to insure. That is done by the IEEE Insurance Committee in concert with the Executive Committee. Bottom line: no one is absolutely assured of full (meaning "insured through to the end of the issue and its resolution") indemnification, even if he or she is following all the rules and behaving completely ethically and perfectly. To further clarify the matter of indemnification, if the SEC, in failing to confirm all or part of the slate of officers, acts in an arbitrary, illegal, or potentially defamatory fashion, indemnification would be questionable. As officers, it is anticipated that they will carry out their duties responsibly and rationally. These duties include whether or not to confirm a slate of officers, and their decision must be rational and not arbitrary, illegal, or defamatory.

I hope this helps.

Best,
Judy"

A number of members of the LMSC EC found this response very disturbing. One EC member's reading of the response was expressed in an email as follows

"My reading of Ms. Gorman's response to Paul's question on indemnification is that EC members are in fact NOT indemnified by the IEEE regardless of any claim to the contrary. Not knowing until after the fact whether your reasons for taking an action are later judged to be "rational and not arbitrary, illegal, or defamatory", which is a subjective judgment, means that any claimed indemnification cannot be counted on and is therefore effectively nonexistent."

Similar opinions are shared by most members of the LMSC EC.

As a result, just before the agenda items on reconsideration were to be taken up during the LMSC EC meeting on November 10, 2003, four (4) members of the EC left the meeting. A statement read by one of the four indicated that the reason for leaving was the perceived lack of IEEE indemnification. The other three (3) stated they were leaving for the same reason. Of those EC members who remained in the meeting and voted to not confirm, all had verified that they had indemnification from their employers.

The now questionable nature of IEEE indemnity for its volunteers raises a number a number of very serious questions and issues.

First, it is not at all clear that Ms Gorman's response is supported by Section I300(3) of the IEEE Bylaws which states

3. Indemnification. To the extent permitted by law, IEEE shall indemnify (i) each Director, Officer, former Director and former Officer of IEEE, (ii) each person who serves as a duly authorized voluntary member or employee of a duly authorized IEEE activity, (iii) each person who shall have served at the request of IEEE as a Director or Officer of another organization, against judgements, fines, amounts paid in settlement and reasonable expenses, including without limitation attorney's fees and expenses, actually and necessarily incurred by such person in connection with the defense of any action, suit, or proceeding to which such person is made or threatened to be made a party by virtue of such service; provided (i) that such service is found by the Board of Directors to have been duly authorized and is not found by the Board of Directors to have been taken in bad faith or in a manner inconsistent with the purposes or objectives of IEEE as expressed in Bylaws, IEEE Policies, or resolutions duly adopted by the Board of Directors or Executive Committee or in policies and procedures duly adopted by an IEEE organizational unit which are applicable to the activity at issue, (ii) the person to be indemnified has otherwise met the standard of conduct set forth in Section 722 or established by Section 721 of the New York Not-For-Profit Corporation Law, and (iii) that such indemnification is not otherwise prohibited by law. The foregoing right of indemnification shall not be exclusive of other rights to which such person may be entitled.

I request a statement as to whether Ms Gorman's statement, or any part of her statement, is a binding interpretation of Section I300(3) of the IEEE Bylaws.

I also question the reasonableness of the requirement in Section I300(3) that

"provided (i) that such service is found by the Board of Directors to have been duly authorized and is not found by the Board of Directors to have been taken in bad faith or in a manner inconsistent with the purposes or objectives of IEEE as expressed in Bylaws, IEEE Policies, or resolutions duly adopted by the Board of Directors or Executive Committee or in policies and procedures duly adopted by an IEEE organizational unit which are applicable to the activity at issue"

Is it really reasonable for a volunteer to be required to be aware of all of the "purposes or objectives of IEEE as expressed in Bylaws, IEEE Policies, or resolutions duly adopted by the Board of Directors or Executive Committee

or in policies and procedures duly adopted by an IEEE organizational unit which are applicable to the activity at issue” before he or she takes some action? I think not.

The net result of this requirement is that after the action is taken, the IEEE can decide that the action was inconsistent with the “purposes or objectives of IEEE” and deny indemnity. And that results in the volunteer having no assurance that he or she will have indemnification as they can never be sure that are aware of all of the items given above or that they will interpret the items in the same way as the IEEE.

The lack of assured indemnification has the following results

- 1 It chills debate on controversial issues and the willingness to vote on principle and the facts of the issue.
2. It reduces the pool of volunteers that are willing to serve in leadership positions to those who are foolhardy, those not willing to take principled positions, those employed by large corporations that provide their own indemnification and those individuals that are capable of protecting themselves.

While there are few certainties in life besides death and taxes, the degree of uncertainty in the IEEE indemnity policy makes it too unreliable to be useful to volunteers.

It is critical for IEEE-SA and IEEE executive management to resolve this matter as soon as possible, and certainly no later than the next IEEE 802 interim session starting January 12, 2004. I am available to support such resolution efforts whenever necessary, as this is one of my highest priority issues.

Best regards,

Paul Nikolich

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