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Technology law is in Ater Wynne's DNA and this focus is a key differentiator for our firm. Attorneys in our **Standards & Technology Consortia** practice have extensive experience with the wide scope of issues that impact the formation and ongoing operation of global technology consortia, standards-setting organizations and other multi-party industry initiatives. To learn more about our firm's **Standards & Technology Consortia** practice please visit www.aterwynne.com

Key Considerations When Technology Consortia Engage In Liaisons Or Other Collaborative Arrangements

Standards-setting organizations and other technology consortia (individually a "consortium"; collectively "consortia") are increasingly entering into liaisons or other collaborative arrangements ("collaborations"). These collaborations could range from simply granting another consortium a right to "incorporate by reference" portions of your specification, white paper or other document, to more complex arrangements such as when consortia jointly develop specifications or other technical documents. This article outlines some of the ways that consortia are increasingly interacting and collaborating with each other, and identifies some of the practical considerations and key legal issues that should be addressed when consortia engage in these collaborations.

JOINT MARKETING OF SPECIFICATIONS OR DOCUMENTS

Consortia often agree to mutually market or promote the other organization's specifications, documents or programs. Each consortium should first identify the benefits of such arrangements, which can range from a desire to raise overall industry awareness of both consortia to more complex technical benefits. Key legal issues to consider include evaluating the need for: (i) confidentiality agreements ("NDAs"); or (ii) an upfront agreement on how each organization will describe the other's specifications, documents or overall purpose.

REFERENCING ANOTHER ORGANIZATION'S SPECIFICATIONS OR DOCUMENTS

Some organizations may want to reference portions of, or "incorporate by reference" an entire version of, another consortium's specifications, white papers or other documents. There are numerous reasons for wanting to reference the content of another consortia; for example, a consortium may not want to "re-create the wheel" if the purpose of a referenced specification is simply to provide an optional implementation to adopters of their specification. Key legal issues to consider include: (i) the reference must comply with copyright law requirements; (ii) upfront agreement on conditions

under which the referenced specification could be amended, if at all; and (iii) whether notice should be given to adopters of the specification that incorporated the other organization's content that they may need to obtain a license from a third party to implement the referenced specification.

EXCHANGE OF INFORMATION OR EARLY ACCESS TO INFORMATION

Some organizations see potential benefits in allowing other organizations the right to review their "roadmaps" or to give each other early access to confidential draft specifications or other documents. Typically, the intent of these arrangements is that the feedback from one consortium will benefit the other organization, particularly if the organizations have some inter-related purposes. Key legal issues to consider include: (i) NDAs are often necessary; (ii) whether the organizations should have an upfront agreement on what each can (or cannot) do with the other organization's still-confidential specifications or documents before they are publicly released; and (iii) whether a receiving organization needs a license to use the other consortium's feedback.

ORGANIZATION SEEKS DISCRETE DEVELOPMENT ASSISTANCE

Some organizations that are in the development stage of their specifications, white papers or other documents may need some discrete technical support or other specific development assistance from another organization to complete their project. This type of assistance could raise legal complexities that should be addressed upfront. Key legal issues to consider include: (i) NDAs are typically essential; and (ii) if the lead consortium seeks to claim full copyright ownership of the final work product it needs to get the contributing entity to either transfer all of its rights in its contribution or grant (at a minimum) the lead consortium a license to use and incorporate that contribution into the lead consortium's specification or document. Due to these legal complexities, your organization should first take the practical step of confirming that the other organization has the necessary expertise to provide the development assistance and also has successfully collaborated in the past with these types of arrangements.

CO-DEVELOPMENT OF SPECIFICATIONS, WHITE PAPERS OR OTHER DOCUMENTS

If two or more consortia share some inter-related purpose or industry focus, they may be attracted to the potential of mutually co-developing (from inception) specifications, white papers or other technical documents. Sharing expertise, splitting costs and reducing development time are just some of the potential motivations for these co-development efforts. However, the structuring and implementation of co-development efforts often raise multifaceted business and legal issues that warrant thorough analysis. From a business perspective, coordinating the co-development of specifications or other complex technical documents between the working groups of two or more consortia can become complicated and may raise multiple decision-making and administrative issues. Key legal issues to consider include: (i) NDAs are essential; (ii) the parties must address the sensitive issue of whether the copyright in the final specification or document will be jointly owned by the participating consortia or solely owned by one of the parties (if it is the latter case, the parties must also decide what rights will be licensed to the participating organizations that do not obtain any rights in the copyright); and (iii) the organizations should evaluate the following potential hurdle-- whether the IP Policies of the respective organizations may have such significant inconsistencies that potential implementers of the jointly developed specification may not be willing to adopt that specification because these inconsistencies raise major intellectual property concerns.

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