March 2018

Boulder COUNTY BAR ASSOCIATION

A CASE FOR BAR INVOLVEMENT

Justice For All Ball Page 4

DAVID DRISCOLL

I served as president of the Boulder County Bar Association twenty years ago. I'm sometimes asked, would I do it again? Would I encourage others to serve?

In short, yes.

It's never been easy to make a living in private practice in this county. It isn't today. It wasn't twenty years ago, or thirty years ago, when I started. We're all concerned about improving our knowledge and skills, building our practices, finding the next good case. Cases end. The shelf life of success is short. Your practice becomes your imperative, and this is, of course, a narrower focus than "the Bar."

There are, too, the challenges of managing a firm and of balancing work and home life, raising kids, caring for parents.

With all of this, why take on more? Why the Bar? Why now?

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A CASE FOR BAR INVOLVEMENT CONTINUED

We practice in a strained and imperfect legal system. Many strengths of our system in Colorado — merit selection and performance review of judges, pro bono representation of the indigent, Legal Aid, continuing legal education, attorney regulation, counseling for lawyers with substance abuse and mental health problems, and much more either came about or are maintained because of lawyers who perceived a need and volunteered. These lawyers were stewards, and this County has had many of them. Our system still needs stewards. The judicial system—nationally, regionally and locally—will not maintain itself or improve without our efforts.

At this moment, however, we need more than stewards. We need defenders. On our watch, and in our time, there is a new challenge—those who seek to discredit the rule of law. The rule of law is an idea, an ideal, nothing more concrete or durable. It needs defending. A critical function of the Bar is to defend it, publicly and visibly. We need some able volunteers. And we need them now.

Bar involvement can also be a needed antidote to maladies of the digital age. As lawyers, we, like everyone in this society, are increasingly tied to our screens and digital devices. We become ever more specialized and isolated. Listservs are fine, but complete lawyers are more than computer message senders. The development of a complete lawyer requires personal and professional interaction beyond the Internet. The communication skills that we need atrophy in the digital age. If you think of the Bar as antidote to the maladies of law by computer, you would be wise.

Bar activities can also bring us in contact with the best and most caring people in our profession.It did in my case. I'd never have met or befriended many of great lawyers I've known around here if I'd stayed back in my office. Quite apart from referrals, or other ways in which they have contributed to my professional success, they have made me a better lawyer by their example, by the way they speak and write, by the way they persuade and solve problems. In short, I'm a better lawyer for having been around them.

So as the deadline approaches for applications for Bar leadership and committee positions approach, I urge you to consider stepping up. Your profession needs you.

David Driscoll served as president of the BCBA from 1997-1998. He can be reached at driscoll@hbcboulder.com

BECOMING A BCBA BOARD MEMBER

If you would like to be considered for a board or co-chair position, please send a letter of intent to laura@boulder-bar.org before April 20. Interviews will be conducted after the board meeting on Thursday, May 3. We currently have openings for 2 three year director positions and one opening for Treasurer which will enter the leadership track to be President in the 2020-2021 term.

We are also seeking co-chairs for the following sections: ADR, Business, Civil, Employment, Elder, Intellectual Property, In House Counsel, Natural Resources, Real Estate, Paralegal, Tax and Estate Planning and Solo/Small Firm.

CALENDAR OF EVENTS

Tuesday, March 6
SOLO /SMALL FIRM ROUNDTABLE
Three Parts of a Solo/Small Firm Practice
Presenter: Susan Vanderborgh, Esq.
Noon @ BCBA Conference Room
RSVP to Kyle Here

Wednesday, March 7
PARALEGAL
Hot Topics in Colorado Construction Law
Presenter: Tasha J. Power
Noon @ BCBA Conference Room
$25 CLE, $15 New/Young Lawyer, $12 Lunch
Register and pay online here

Wednesday, March 7
CIVIL
Cover and Move: Getting the Most from Your Auto Insurance
Presenter: Brian Bradford
Noon @ Justice Center Training Room East
$25 CLE, $15 New/Young Lawyer
Register and pay online here

Thursday, March 8
ALL-BAR CLE
Sharpen-Up: The Lawyer Self-Assessment
Presenter: Karen A. Hammer
Noon @ BCBA Conference Room
$25 CLE, $15 New/Young Lawyer
Register and pay online here

Wednesday, March 14
CRIMINAL
All About the Adult Integrated Treatment Court
Presenter: Christina Orlowski
Noon @ Justice Center Training Room East
$25 CLE, $15 New/Young Lawyer
Register and pay online here

Wednesday, March 14
IN-HOUSE COUNSEL
#UsToo - Investigating Sexual Harassment Complaints in the Me Too Era and How to Prevent Them in the First Place
Presenters: Kathleen Alt & Giovanni Ruscitti
4:30 PM @ Berg Hill Greenleaf & Ruscitti LLP
$25 CLE, $15 New/Young Lawyer
Register and pay online here

Thursday, March 15
REAL ESTATE
Title Issues Created by Standard Real Estate Contract Forms
Presenter: Ron Jung
Noon @ Dickens Tavern, Longmont
$25 CLE, $15 New/Young Lawyer, $16 Lunch
Register and pay online here

Thursday, March 15
BANKRUPTCY
Monthly Lunch and Roundtable
Noon @ Kathmandu

Friday, March 16
AVAILABILITY OF LEGAL SERVICES
Monthly Roundtable
Noon @ BCLS

Tuesday, March 20
ELDER
Considerations for Hiring Outside Counsel
Presenters: April McMurrey
Noon @ BCBA Conference Room
$25 CLE, $15 New/Young Lawyer
Register and pay online here

Wednesday, March 21
FAMILY
Nuts and Bolts of Attorney's Fees Issues
Presenters: Judge Maria Berkenkotter (ret.), Chris Jeffers, and Lee Strickler
Noon @ BCBA Conference Room
$25 CLE, $15 New/Young Lawyer
Register and pay online here

Thursday, March 22
NATURAL RESOURCES
Impacts of the Trump Administration on the Colorado Energy Industry
Presenter: Gabriella Stockmayer
Noon @ BCBA Conference Room
$25 CLE, $15 New/Young Lawyer
Register and pay online here

Thursday, March 22
SENIOR LAWYER'S HAPPY HOUR
5:00 PM @ Boulder Beer (1123 Walnut St)
RSVP to Kyle Here

Thursday, March 22
FREE LEGAL CLINIC
Free legal consultations for the public
5:30 PM @ Sacred Heart of Jesus Church (1318 Mapleton Ave)

Wednesday, March 28
TAXATION, ESTATE & PROBATE
Presentation TBD
Presenter: TBD
Noon @ BCBA Conference Room
$25 CLE, $15 New/Young Lawyer
Register and pay online here

2018 Boulder County Bar Association



JUSTICE FOR ALL BALL

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Thank you to Hazel's for donating the beer and wine for our event.

The Justice For All Ball was our biggest fundraiser to date for Colorado Legal Services. We had close to 250 attendees and the event brought in over $23,000! Thank you all for your support. We're looking forward to seeing you next year!

PHOTO BOOTH FUN!






























TAX CUTS AND JOBS ACT: ESTATE PLANNING CONSIDERATIONS

ABBY C. BOYD

On December 22, 2017, Public Law No. 115-97, introduced in Congress as the Tax Cuts and Jobs Act (the "Act"), was signed into law. The Act made certain changes to the transfer tax and fiduciary income tax system. A summary of those changes and planning considerations follows. This article does not review the Act's changes to the income tax system generally.

The Act doubles the estate and gift tax applicable exclusion amount and the generation-skipping transfer tax ("GST") exemption amount, from $5,000,000 to $10,000,000. These amounts are indexed for inflation. The applicable exclusion amount for an individual in 2018 is estimated to be $11,180,000. Married couples have a combined exclusion amount estimated to be $22,360,000 in 2018 based on exemption portability. The IRS has not yet determined the final 2018 applicable exclusion amount and may not make the final determination until late in 2018[1].

The Act changes the system used to index exemptions and exclusions for inflation, relying on the Chained Consumer Price Index ("C-CPI") rather than the traditional Consumer Price Index ("CPI"). According to the Congressional Budget Office, C-CPI is estimated to measure inflation to be 0.25% lower than under CPI, so the gift tax annual exclusion, estate tax applicable exclusion amount and GST exemption amounts will increase more gradually than under the previous index. In addition, C-CPI is revised over a period of several years so programs subject to C-CPI indexing will be indexed to a preliminary estimate and then subject to revision due to estimation error[2]. It is unclear how this could affect taxable estates claiming an estate tax applicable exclusion amount that may be subject to revision.

Most of the Act's provisions terminate on December 31, 2025. This means that the Act's higher applicable exclusion amount will apply to estates of decedents who die on or before December 31, 2025. On or after January 1, 2026, unless Congress enacts additional legislation, the applicable exclusion and GST exemption amounts will return to pre-2018 levels, *i.e.*, $5,000,000 for an individual, indexed for inflation. The change to C-CPI indexing is made permanent.

Individuals are not likely to face a gift tax "claw back" problem. A "claw back" could exist if an individual chooses to make large gifts prior to 2026 using the higher exclusion amount and that amount then returns to pre-Act levels. The Act directs the Secretary of Treasury to issue regulations to prevent such a claw back, although such regulations have not yet been issued.

The Act makes sweeping changes to income tax rules. While most of these changes are outside the scope of this article, some are applicable to fiduciary income taxes as reported on Form 1041.

Changes to the exemption amounts for fiduciary income tax returns are largely unchanged. Exemption amounts remain at $600 for estates, $100 for complex trusts (trusts with no mandatory income distributions) and $300 for a simple trust (trusts in which income is required to be distributed annually to beneficiaries)[3]. However, the Act created an exemption for qualified disability trusts[4]. Previously, these trusts had a deduction equal to the personal exemption of the disabled individual beneficiary. The Act repealed personal exemptions and introduced a $4,150 (indexed) deduction for a qualified disability trust for years in which the personal exemption amount is $0[5].

A new Section 67(g) disallows all miscellaneous itemized deductions which were subject to the 2% adjusted gross income ("AGI") floor. There has been some commentary suggesting that this new provision may eliminate the deduction for executor and trustee fees in § 67(e)[6]. However, it is more likely that executor and trustee fees are not eliminated by § 67(g) because they are "above the line" deductions not subject to the 2% of AGI floor.

TAX CUTS AND JOBS ACT CONTINUED

However, excess deductions at termination (as provided for in § 642(h)(1))*are* eliminated by § 67(g). This means that fiduciary returns will no longer be able to pass along excess deductions at termination to beneficiaries. This provision is terminates on December 31, 2025.

Given the changes to the estate tax's applicable exclusion amount and GST exemption amount, planners and their clients should review existing estate planning documents to ensure they continue to align with the client's goals. Many clients may wish to consider simplifying their planning, removing tax-motivated trusts that are no longer needed. Planners should caution clients that the higher exclusion is temporary and the political climate volatile.

Higher exclusion amounts will cause some planners working with wealthy clients to consider large lifetime gifts.Individuals should be careful in making large gifts of low-basis assets, as a transfer during life continues to provide the donee carryover basis. In addition, GST planning will remain a factor for clients with high net worth, as the Act did not make changes to the lack of portability of the GST exemption amount.

Estate planners and their clients should also consider existing documents that provide for the creation of marital and credit shelters trusts. Most of these plans include "formula" provisions that could produce results that no longer align with client goals. A formula provision that leaves all assets not subject to estate tax to a credit shelter trust may now transfer 100% of the family's assets into a trust that typically will not result in a second basis adjustment at the death of the surviving spouse. For those clients who do not face an estate tax, updating documents to consider basis planning may be advantageous.

While the Act's changes to the transfer tax system were relatively minor, its passage is a good opportunity for clients to review their existing plans to ensure they continue to align with their estate planning goals.

[1] Click here to go to irs.gov What's New Estate and Gift Tax

[2]Rob McClelland, "Differences Between Traditional CPI and the Chained CPI" Published April 19, 20013, found at https://www.cbo.gov/publication/44088.

[3]See I.R.C. §642(b).

[4]I.R.C. § 642(b)(2)(C)(ii) defines qualified disability trust.

[5]I.R.C. § 642(b)(2)(C)(iii).

[6]See, e.g., Akers, Selected Highlights of Tax Cuts and Jobs Act and Estate Planning Considerations, January 5, 2018.

Abby Boyd is a Co-Chair of the Tax, Estate Planning and Probate section of the Boulder County Bar Association. She can be reached at aboyd@kingsberyjohnson.com

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PRESIDENT'S PAGE

RENEE EZER



In service to my year of exploring attorney wellness, I recently had a weekend of R&R in the Bay Area. While I was there, I had the good fortune to catch up with an old friend, Jeff Makoff. Jeff is a partner at Valle Makoff LLP in San Francisco who represents a wide variety of technology companies in business disputes and transactions. In these matters, he's become quite knowledgeable about blockchain technology and its applications in business and in the practice of law.As I've also been using this year to get a grip on evolving technology, especially as it relates to the practice of law, I asked Jeff if I could interview him to better understand this technology trend. Here's our conversation:

RE: What is 'blockchain' technology?

JM: Blockchain is a system in which a network of stranger-users – such as web-connected people who do not know each other -- collectively verify facts and complete transactions through an open, "tamper-evident" data ledger. Various terms are used to describe the basic goal and putative achievement of blockchain, including "tamper-evident data repository," "distributed database", and "immutable distributed ledger." The "block" in blockchain is a piece of data --a fact or transaction -- attached to information that verifies when it was created, and proves it has not been altered and has been validated by the group. The "chain" is the digital history of that block, including prior blocks and subsequent blocks, all of which create an audit trail. Notwithstanding the "open" nature of a blockchain, the actual human identity of blockchain users can be concealed behind private passwords and identity codes.

RE: What does blockchain add to what we already have?

JM: The current Internet is great at making connections, but it's terrible at validating information. True and false information is managed similarly on the Internet, so users are required to use judgment to ascertain key facts and use intermediaries – such as banks and retailers -- to complete many transactions. A well-implemented blockchain creates a highly-reliable source of information and keeps track of transactions. With trusted information and the ability to transact, people can engage in a wide variety of direct transactions with confidence and without third-party intermediaries merely to connect parties and complete transactions. Blockchains could create a growing set of accurate databases and direct trading networks. Such a system would help solve two major problems of the internet --bad information and fraud.

RE: How does blockchain work?

JM: Blockchain uses three principles to generate reliable data. First, to be deemed true, a fact should be verified and deemed reliable by a large number of independent people In other words, there should be "consensus". Second, the source of information and its history should fully disclosed and be available to everyone. So, there should be an audit trail. And, third, information deemed true by consensus should be extremely difficult to alter and all persons who rely on the information should be told if it has been changed. On an engineering level, blockchains rely on cryptography to expose alteration. Each block has a complex identifying code that is regenerated if data in the block has changed. Each block also holds the code -- called a "hash" -- of the block before it. The smallest alteration of data in a block triggers a dramatic recalculation of all hashes, invalidating the entire chain because user consensus will be to stick with the unaltered chain.

RE:Is it 'block chain', 'blockchain' or 'the blockchain'?

JM:"Blockchain", as one word, is used to describe a technology system that's based on blockchain technology, as in "*We are building a blockchain system to track real property transfers".* "*The*blockchain" often refers to the entire blockchain ecosystem the same way the internet describes the internet ecosystem, as in*"We are developing apps for the blockchain"*. "The blockchain" also is used to describe a particular blockchain, as in*"It is almost impossible to change a transaction once it has been added to the Bitcoin blockchain".*

RE: Are there blockchain apps?

JM: Yes, they're called "Daaps", -- for "Decentralized applications".

RE: How does blockchain relate to Bitcoin and other cryptocurrencies?

JM: Bitcoin and other cryptocurrencies are built on blockchain technology. The originators issue a limited set of electronic "coins" and use blockchains to track ownership and transfers. Like all currencies, the value of cryptocurrencies ultimately is driven by supply and demand.

RE: Who's developing blockchain technology?

JM:A lot of people are focused on blockchain, including major financial institutions, law firms, content creators and entrepreneurs who see possible applications in every field. It's moving as fast as technology can move. Well over $1 billion in venture capital already has been invested. New blockchain-related businesses and departments are forming every day.

RE: What are the most likely future uses of blockchain?

JM: Time will tell. Think about areas in which legal rights and financial relationships derive from the occurrence or non-occurrence of a verifiable facts or chains of transactions. Think about notary books, real property title transfers, Secretary of State records, anything that uses a ledger, anything in which a duty is triggered automatically by a verifiable fact, a set of facts or an event. Think about "smart contracts" that enforce themselves - in whole or part. Blockchain code is open source and can support thousands of use cases.

PRESIDENT'S PAGE CONTINUED

RE:How will blockchain affect lawyers and the legal profession?

JM: It's going to. First there'll be a lot of legal work related to businesses built around blockchain, with accompanying business organization, regulatory and intellectual property issues. Larger law firms are racing to launch blockchain-focused practice groups. Bar associations, legislatures, interest groups and businesses are under pressure to ensure that their legal-regulatory environment is adaptable to blockchain applications. Next, like the Internet, blockchain will seep into the way we practice, practice tools and the management of law firms. Some of this we will notice and the rest will be in the background.

RE: Is the law changing because of blockchain?

JM: Yes, it is. Delaware law was amended to permit corporations to use "distributed electronic networks or databases"-- which are blockchains -- to create and maintain corporate records, including stock ledgers, the data of which can be transmitted to stockholders. In California, a bill was introduced in February 2018 to revise the definition of "electronic record" and "electronic signature" to include records and signatures secured via blockchain technology, making such records legally binding. Likewise, Florida, Tennessee and Nebraska legislators are contemplating bills that legally recognize blockchain signatures as electronic records, similar to one passed in Arizona in 2017. Additionally, Nebraska has another bill pending related to blockchains, comparable to one Nevada passed in 2017, which prohibits local governments from taxing and/or regulating the use of blockchains. In Vermont and Delaware, blockchain data is admissible evidence in court. Also in Vermont, legislators are considering a bill which regulates blockchains in an effort to promote and expand financial technology opportunities for both public and private sectors within the state. Hawaii and Illinois have both studied blockchains to determine if and how to regulate the new technology. State bar organizations should take note or potentially be playing catch-up.

RE: Who regulates the use of blockchain?

JM: The same people who regulate everything –and nobody in particular. The SEC is now focused on fraud in the promotion of cryptocurrencies and cryptocurrency derivatives. Other regulatory bodies are waiting to see what problems arise with blockchain before adopting regulations. Some agencies have a "do no harm" approach to blockchain – trying not to burden the industry with regulations and encourage blockchain to develop. Absent federal legislation, most blockchain regulation will fall to the states. In July 2017, the Uniform Law Commission introduced a model Regulation of Virtual Currency Businesses Act.

RE: How do you think people will make money with blockchain?

JM: It's unclear. I think there'll be a lot of trial and error, similar to the early days of e-commerce and cloud computing. The most prominent blockchain use, in Bitcoin, has some unusual attributes. Participants are permitted to 'mine' for new coins by solving complex puzzles. The coins have value because there is demand, which induces time and resource-consuming activity that grows the network. Absent such unusual incentives, many blockchains will likely become components of database systems in which some services are paid-for. Blockchains don't have to be public, and it's not hard to imagine a world in which a trusted private business manages fact or transaction-specific blockchains for a fee. Certainly blockchain engineers and consultants will be in great demand.

RE: How are law firms using blockchain?

JM: Right now a few law firms are developing sufficient blockchain knowledge to be leaders in the transition. By designating partners and practice groups who are focused on the law and business of blockchain, a firm can send the message that it's a "Web 3.0", rather than a "Web 2.0", law firm. It's still Day 1.

RE: What disputes are arising around blockchain?

JM: Most of the action is regulatory and law enforcement, such as the "Silk Road" drug marketplace prosecution. Recent articles have commented that not all people who invest in Bitcoin are reporting and paying their taxes. Our firm has just started to get calls on owner-level disputes in blockchain businesses formed in the past couple of years. I'd anticipate that most of the news in the next year will concern friction between existing regulation, emerging business plans and models, and the unique nature of blockchain.

RE: What are the concerns and negative impacts of blockchain?

JM: There's a lot of concern about fraud, manipulation, privacy, security, scalability and the ability of blockchain to improve things outside its main use case – which is a ledger of cryptocurrency transfers. The prospect of thousands of massive, decentralized, trustworthy, low cost databases and direct transaction tools – in theory – disrupts everything from banks, to retailers, to Google. One surprising concern is environmental. Blockchain in its current form requires massive computer processing power and electricity for the storage, transfer and analysis of data files that grow very large, very quickly. Perhaps these are not dissimilar to the early bandwidth and storage challenges presented by the Internet.Engineers are working to develop energy efficient blockchain approaches to reduce the amounts of electricity required to maintain large blockchain networks.

RE: Is blockchain a fad that will go away soon?

JM: No way. It's real.

RE: What should a solo practitioner or small firm do to stay up-to-date on blockchain developments?

JM: We're just starting to see blockchain continuing education programs. Go to one. If you are really interested, subscribe to the e-newsletter of coindesk.com which has all things blockchain. Blockchain is a hot topic online and there are dozens of YouTube videos by experts.

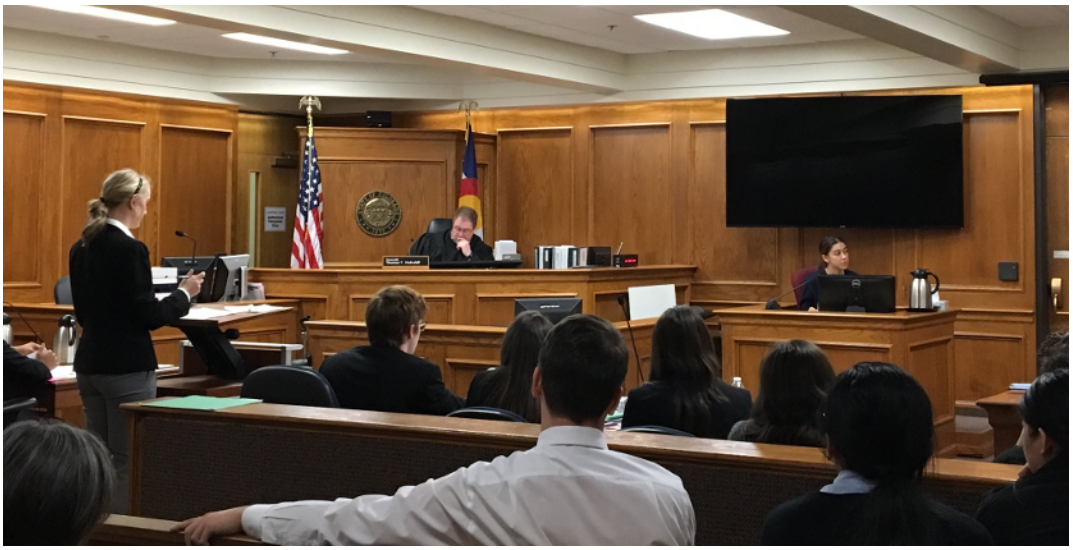
RE: Jeff, thanks for your time today. I learned a lot.

JM: My pleasure. Always good to catch up.

Renee Ezer is a shareholder at Dietze and Davis, P.C. She can be reached at 303-447-1375 or ezer@dietzedavis.com.

2018 HIGH SCHOOL MOCK TRIALS

RON JUNG



During the week of February 10th, I was privileged to be a scoring judge for the Boulder County High School Mock Trial competition. All of the young men and women were impressive and should be commended for their efforts. Their commitment to our court system is promising and a positive reflection on our young people.

During the last competition, I also observed a striking quality; the last two teams consisted of Asian, Hispanic, Eastern European, Indian, Caucasian and perhaps other ethnicities. The diversity of these young people was wide ranging. It was impressive to watch this diverse group work effectively together promoting our judicial branch and democracy. This diversity is what makes America great. Thank you for showing us how important diversity is and setting an example for us all.

CONGRATULATIONS TO OUR 2018 FINALISTS



Fairview High School



Niwot High School

WHAT IS THE FUTURE OF PATENT POOLS?

JUDSON CAREY

Background

Think for a moment of the standards that are required in a typical mobile smartphone: 3GPP (2G, 3G, 4G/LTE) for transmission; TDMS, FDMA, CDMA, and OFDM for channel access; SIM card; MPEG for video; JPEG for pictures; Wi-Fi/802.11; GPS, etc. just to name a few. At the European Telecommunications Standards Institute (ETSI)—a standards setting organization (SSO) that includes the 3GPP wireless standards—over 160,000 patents were declared "essential".

Patent pools are formed around technology standards to offer an efficient means for licensing a large number of patents from multiple patent owners in a one-stop shop. For the implementer of the standard, a patent pool offers the convenience of a single license rather than negotiating with dozens of individual patent owners for a patent license.

Once a standard is published, a patent aggregation licensing authority, for example MPEG-LA or Via Licensing "License Administrators", will issue a "call for patents" that are "essential" to practice or implement the standard. Interested parties will then submit patents they believe to be essential to the standard to the License Administrator. Accompanying the patent submission is a claim chart that maps at least one patent claim to specific language in the standard to demonstrate essentiality. Typically, an independent patent evaluator will examine the submitted patents to verify that the claim is truly essential.

Most standards are drafted in an SSO such as 3GPP, MPEG, ETSI, IEEE. These SSOs operate under an Intellectual Property Rights Policy ("IPR Policy") that defines the patent license commitments of the participants setting the standards. The IPR Policy serves to prevent "patent hold-up" by participants after the standard is set. That is, the IPR Policy generally requires the participants to agree to license patents essential to the standard on a reasonable and non-discriminatory ("RAND") basis. This prevents participants from inserting the standard essential patents, then extracting extortionate patent license fees on products conforming to the standard.

Historically, the early patent pools (e.g., MPEG-2, Advanced Audio Coding (AAC)) charged a one-time per-device fee paid by the manufacturer of the product sold to end users. The MPEG-2 patent pool is often touted as being the most successful patent pool and the benchmark for later patent pools. MPEG-LA's MPEG-2 patent pool license initially charged a royalty rate of $6 per product, but lowered the fee over time to as low as $0.35 per product as the number of patents in the pool declined due to expiration, and the market shifted to more modern codecs. MPEG-HEVC (High Efficiency Video Codec), the latest video codec standard, sets a royalty rate of $0.20 per product.

A divergent patent pool landscape today

Unfortunately for consumers, the patent pool landscape has diverged from the historical one-time per-device fee.

HEVC

Let's take MPEG HEVC as an example. MPEG-LA's patent pool has 36 patent owners who own several thousand world-wide patents, and around 200 licensees.

However, some patent owners were dissatisfied with the MPEG-LA royalty fee structure. Breaking away from the MPEG-LA patent pool, Dolby, GE, MediaTek, Philips, Mitsubishi, Samsung, and Warner Bros. set up their own patent pool called HEVC Advance. HEVC Advance charges a one-time per-device fee ranging from $0.40 to $1.20. But, HEVC Advance also charges per-title fees of $0.25 per title, and per-subscriber fees of $0.015 per subscriber for distributors such as cable and satellite operators.

Obviously, the patent owners in HEVC Advance were looking to generate more revenue from their patents. Yet, they may have set their sights too high initially. Twice HEVC Advance has announced changes to their fee structure. First, they announced that software-only downloaded HEVC codecs (e.g., browsers, apps) would not be charged a royalty fee. More recently, they announced a lower fee structure for consumer products under $40.

PATENT POOLS CONTINUED

Another group of companies, including Ericsson, Panasonic, Qualcomm, Sharp, and Sony have set up a *third* patent pool for HEVC, managed by Velos Media. And, separately, Technicolor—who was initially in the HEVC Advance pool—has announced that it will license its HEVC patents in a standalone patent licensing program. It is unclear how much Velos Media and Technicolor plan to charge for their patents.

The patent pool process has also become less transparent. Velos Media and Technicolor do not use an independent third party evaluator to verify essentiality, nor do they publish the patents being licensed.

So, for manufacturers, and ultimately consumers, at least three or more patent licenses, each with a separate fee, could be required to build a product or stream video employing HEVC.

Where do we go from here?

I understand the need to recoup costs for research and development. And, one way to do that is to monetize patents. I also understand the desire to have parties that benefit from the use of various technologies pay for such benefit—this has been a complaint by video product manufacturers who pay one-time per-device fees, whereas content owners and distributors have not paid patent royalties in some licensing models. And, other market dynamics need to be accounted for as well—globalization and adoption of international standards, relative pricing models in less developed countries and implementation of subsets of standards.

That said, the efficiencies of patent pools are being eroded by the balkanization of patent pools around important technologies. To avoid this situation and improve upon the successful patent pool model, patent owners and patent licensees need to observe some basic principles, starting from a RAND license model and building on Judge Robart's principles in *Microsoft v. Motorola*:

·RAND royalties should promote adoption of the standard.

·RAND terms should mitigate the risk of "patent hold-up" and royalty stacking (the total royalties payable if other SEP holders *not* in the pool made the same demands).

·RAND royalties should provide the patent owner a reasonable return on its investment.

·RAND royalties should limit the patent owner to a reasonable royalty on the economic value of the patented technology itself, apart from the value associated with the patent's incorporation into the standard.

·RAND pricing should be transparent and publicly disclosed.

·Essentiality should be determined by an independent third party, and the list posted publicly with corresponding sections in the standard.

·The patent pool should only include patented features that are actually used in the marketplace, not superfluous features.

·If certain devices only use portions of the standard (e.g., chip, server, client device, etc.), differential pricing should be considered.

·The license model should account for low cost, and low volume, products.

·The license model should consider factors such as developing countries, emerging markets, and different margins (esp. in China, India, and African nations).

If you have questions or thoughts about the future of the patent pool model, please contact me.

Judson Cary is Vice President & Deputy General Counsel at CableLabs, a non-profit research and development organization owned by the global cable industry. He can be reached at j.cary@cablelabs.com

PROFESSIONALISM ON CALL

March 5	Meghan Pound	303.443.8010
March 12	Tom Rodriguez	303.604.6030
March 19	Karl Kumli	303.447.1375
March 26	Tripp DeMuth	303.440.9684

The Professionalism Committee assists lawyers, clients, and other members of the community with questions or complaints about behavior by lawyers that fails to meet generally accepted standards of professionalism and courtesy, or that is contrary to the BCBA Principles of Professionalism.

The Professionalism Committee does not address allegations of criminal or ethical violations by lawyers, as regulated by the Colorado Rules of Professional Conduct, and any such violations should be addressed to the Office of Attorney Regulation Counsel.

BOULDER COUNTY FREE LEGAL CLINIC

The dates have been set for the 2018 Free Legal Clinics at the Sacred Heart of Jesus Church (2312 14th Street) and the Longmont Senior Center (910 Longs Peak Ave) from 5:30 - 7:30 pm. Volunteers are always needed. Please contact Laura at laura@boulder-bar.org if you can help in Boulder, or susan.spaulding@longmontcolorado.gov if you can help in Longmont.

Boulder: March 22, June 21

Longmont: February 27, May 22

PRO BONO CORNER

Interested in a Pro Bono case? Please call Erika at 303-449-2197. CLE credits available for pro bono service.

PRO BONO REFERRALS

Eight cases were referred during the month of January. Thank you to the following attorneys:

Rebecca Boyle
Graham Fuller
Ronald Jung
Charles Martien
Gary Merenstein
Jeff Skovron

Thank you to the following attorneys who accepted a mediation case:

Beth Ornstein

Thank you to the following attorneys who agreed to act as mentor on a BCLS case in January:

PRO SE VOLUNTEERS

Josh Anderson
Joyce Bergmann
Kathleen Franco
Tucker Katz
Josh LaFramboise
Michael Morphew

BCAP VOLUNTEERS

There were no requests for a referral for the Boulder County AIDS Project in October.

LAWYER ANNOUNCEMENTS



PackardDierking
ATTORNEYS AT LAW

is pleased to announce that

Bradley R. Curl

has joined the firm as a Partner.

Brad's practice will continue to emphasize real estate, land use, construction, business and corporate law.

The firm's practice will continue to emphasize commercial real estate, development, land use, corporate/transactional, general business counsel, tax and estate planning, conservation and intellectual property.

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www.packarddierking.com

The Best Way to Recycle Computers/Electronics

Recently an organization called Blue Star Recycling teamed up with the Center for Hard to Recycle Materials to increase the capability of CHaRM to handle all electronics - and help an important segment of our community at the same time. Blue Star, which originated in Colorado Springs, now with a second facility in Denver, found that those with Autism are particularly good at completing detailed, repetitive tasks, such as disassembling computers and electronics. And the employees are not only good at their work, but very grateful to have the job so are almost always at their worksite on time and ready to work. All electronic components that are removed from computers and other electronic devices by Blue Star Recyclers are recycled per the highest industry standard. Attorneys are most concerned with the information on their hard drives, which sometimes can be retrieved even after the hard drive has been "wiped clean" while installed in the computer. Blue Star destroys the hard drive at their Boulder site so that there is no chance that any information from the hard drive can be retrieved. Blue Star/CHaRM will recycle all electronics, including printers, scanners, cell phones, smart phones, TVs , DVD players, CD players, and DVRs. Each will be disassembled and recycled by Bliue Star employees in Boulder. The cost is based on weight, as follows: Computer towers (CPUs), laptops, tablets: no charge • CRT (not flatscreen) TVs, rear-projection TVs, monitors: $0.59/lb • All other electronics, including audio equipment, mobile phones, fax machines or any other item with a battery or cord: $0.39/lb • Hard drive shredding: $12/drive Blue Star/CHaRM is located at 6400 Arapahoe Ave, Boulder. They are open daily except Sunday from 9:00 to 5:00.

Blue Star Recycling/CHaRM - the best solution to the question of what to do with your old computer. Or as the Blue Star tagline puts it: "We put e-waste to work!"

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Boulder COUNTY BAR ASSOCIATION

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