

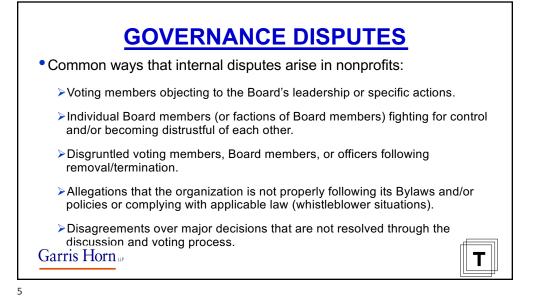
OverDrive, Inc. v. The Open eBook Forum, 288 A.3d 305 (D.C. 2023) ("OverDrive").

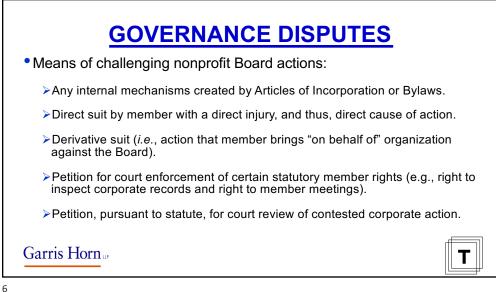
• The OverDrive case: (i) is a rare published appellate court opinion addressing nonprofit corporate governance dispute issues; and (ii) provides important lessons that can help other organizations mitigate the potential damage of similar disputes.

Garris Horn







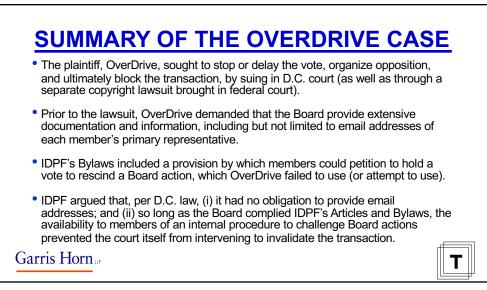


## SUMMARY OF THE OVERDRIVE CASE

- OverDrive involved a 501(c)(6) nonprofit trade association in the digital publishing space that sought to execute a merger-type transaction with a larger nonprofit, the World Wide Web Consortium ("W3C").
- The defendant, IDPF, was a "membership organization" under the D.C. Nonprofit Corporation Act, which means IDPF's members had rights under D.C. law, including rights to elect Board members and officers, receive access to certain documents, and vote to approve certain corporate actions.
- The transaction in this case (an asset transfer with certain rights and privileges for IDPF's members) was approved by IDPF's Board of Directors and then by over 80% of IDPF's members, voting through their "primary representatives."

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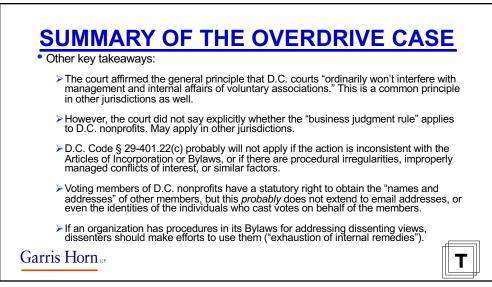




## SUMMARY OF THE OVERDRIVE CASE

- The D.C. Court of Appeals affirmed the lower court's summary judgment ruling in favor of IPDF based on the following legal holdings:
  - > The transaction did not violate IDPF's Articles of Incorporation (or Bylaws).
  - The Bylaws provision allowing members to petition to rescind a Board action constituted a **non-illusory** "means of resolving a challenge to a corporate action" under D.C. Code § 29-401.22(c).
    - >Under D.C. law, this means the court was not empowered to invalidate the transaction (except if appropriate to enforce the Articles or Bylaws).
- The Bylaws remedy was not rendered *illusory* by IDPF's refusal to provide the *email addresses* of the "primary representatives" of IDPF's members.
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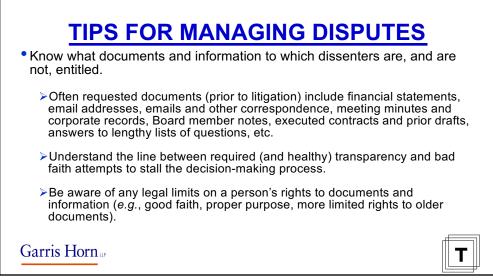


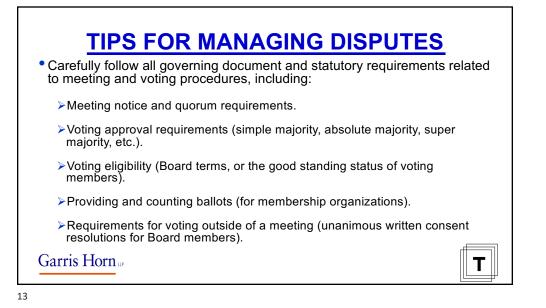


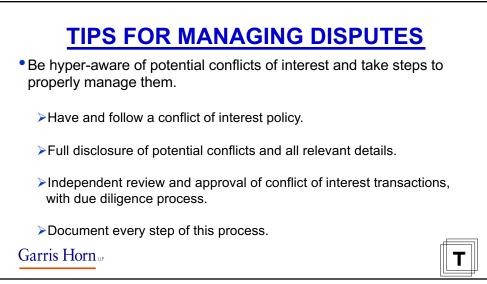
- Consider amending the Bylaws to add a process for hearing and addressing dissenting views (this provides special legal protections for D.C. nonprofits and *may* prove helpful for other organizations as well). For example:
  - Create a process for dissenters to petition for a special vote to overturn or reconsider prior actions (e.g., OverDrive).
  - Establish a committee outside of the Board whose role is to hear both sides of a dispute and help with resolution (either an independent advisory committee that makes recommendations, and/or a Board committee that makes the final decision).
  - Consider a more structured process in the Bylaws for building consensus, such as "fist to five voting."

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 Document all Board and member meetings through proper drafting of meeting minutes.

>Be *intentional* about the information included in the minutes (avoid excessively detailed minutes).

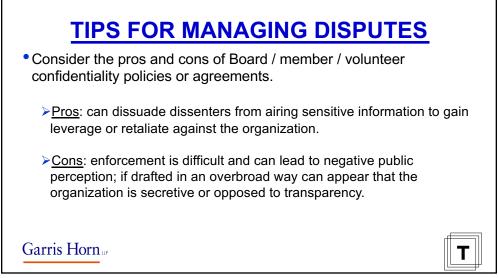
>Be *thorough* in documenting due diligence steps.

Be careful, accurate, and fair (avoid including inaccurate or false statements or opinions that may appear biased or one-sided).

Be clear about which documents are the official, Board-approved minutes (have the Secretary sign/certify meeting minutes after approval of the minutes by the Board).

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