



# California Corporate & Securities Law

## Board Meetings And The “Annihilation of Distance”

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Yesterday's [Wall Street Journal](#) included an article by Joann S. Lublin about the increasing use of videoconferencing technology to hold board of directors meetings. One important question not addressed in the article is whether a board member who participates in a meeting by videoconference can be counted as “present”.

Fortunately, the California legislature answered this question in 1995 when it enacted [AB 699](#) (Cunneen), Stats. 1995, ch. 811. That legislation authorized directors to participate by “electronic video screen communication” or “other communications equipment”. I wrote about this change in *The California Corporations Code Enters Cyberspace: 1995 Legislation Tackles New On-Line Technologies*, 18 CEB Cal. Bus. L. Rep. 5 (July 1996).

In 2004, the California legislature comprehensively addressed electronic communications to and from corporations when it enacted [SB 1306](#) (Ackerman), Stats. 2004, ch. 254. SB 1306 relaxed some of the existing conditions to holding meetings by conference call and video screen technology. Now, participation in a meeting through the use of either conference telephone or electronic video screen technology constitutes presence in person *so long as all members participating in the meeting are able to hear one another*. Cal. Corp. Code § 307(a)(6). Additional conditions are imposed if a director participates in a meeting through electronic transmission by and to the corporation by other means. I discuss SB 1306 at some length in *Mr. Watson – Come Here! New Rules for Electronic Communications by and to California Corporations*, 20 CEB California Bus. L. Prac. 4 (Fall 2005).

For those wondering about last year's amendment to Section 307, see this [post](#) from last July.

I suspect that some older corporations have bylaws that predate the enactment of SB 1306. Thus, they may impose conditions on board meetings by videoconference that are more stringent than are required by current law. Since Section 307(a)(6) is subject to a contrary provision in either the articles or bylaws, the articles or the bylaws may preclude or limit videoconferencing – particularly if they have not been updated in the last few years. Therefore, you may want to dust off the bylaws if you plan to hold board meetings by videoconferencing technology.

Please contact [Keith Paul Bishop](#) at Allen Matkins for more information [kbishop@allenmatkins.com](mailto:kbishop@allenmatkins.com)

<http://www.calcorporatelaw.com/>

Another interesting question is the geographic location of board meetings held by videoconference. Several provisions of the California Corporations Code (*e.g.*, Sections 1501, 1600 and 1602) apply to foreign corporations that customarily hold board meetings in California. This, of course, begs the question of where videoconferenced meetings are “held”.

In closing, note that the links provided above are to the chaptered form of the bills – not to the current California statute. Also, the reference to “Annihilation of Distance” in the title of today’s post is from H.W. Fowler’s *A Dictionary Modern English Usage* (2nd ed. 1965) in which he discusses the popular use of the the Greek prefix *tele*. Fowler was not impressed with its growing popularity: “Inevitably, in these days of annihilation of distance, this Greek prefix has been used with a freedom that make it a prolific source of what are called in this book BARBARISMS.”

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