GERBSMAN PARTNERS
PERFORMANCE – LEADERSHIP – ETHICS – INTEGRITY

The BoIC Talks – Wireless, Music & Media

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The Board of Intellectual Capital Talks

Gerbsman Partners is proud to present "The BoIC Talks", where members of Gerbsman Partners' *Board of Intellectual Capital* and Industry leaders speak out on important current business topics. It is our intention to publish this newsletter, along with our regular Wireless, Restructuring and Technology White Papers throughout the year.

Please visit Gerbsman Partners website at gerbsmanpartners.com for previous White Papers, as well as biographies on our distinguished Board of Intellectual Capital. We look forward to continue to earn the right to assist stakeholders to maximize enterprise value.

Best Regards,
Steve (Steve@GerbsmanPartners.com)

In This Issue

Developments in wireless have mirrored the internet in terms of providing new solutions for old challenges and by offering innovative new products and services. The reach of this technology however, is broader and the opportunities even greater than for the internet. While Asia and Europe have moved along rapidly, US developments have been slow primarily due to obstacles imposed by various gatekeepers. Issues like standards, operator buy-in, and billing challenges reflect the fact that surprisingly few understand how to use this new medium. We've even met equity sponsors who have said, "Americans are not interested in typing on their phones, so SMS will never take off".

The music industry is still struggling to figure out how to deal with the internet and are facing great confusion with the industry effects of new wireless and handheld offerings. Many other industries have done a better job adapting to the internet but are still struggling in their attempts to find ways to leverage new communication channels. Since most marketing and PR firms are not up to date on how these channels can help to better reach an audience, they can not sufficiently serve their clients and it is likely that a new breed of media/consulting companies will grow to exploit that weakness, just like during the good old internet era.

Avoiding Dot Bomb Replay

As we watch the economy recover, we recognize characteristics similar to those seen in the 1998-2000 marketplace. There is a significant availability of cash, valuations are high, liquidity events and asset sales are increasing, cash flow lending is back, substantial capital is being raised, and intellectual property based business models are popular again. For the Crisis/Turnaround Management side of our business, this ultimately indicates an upswing by mid 2006 or sooner, requiring an answer to the following question: What can stakeholders do to insure/manage the process better to avoid challenging deals in their portfolios?

1. Focus on the control, preservation and forecasting of cash.
2. Insure Leadership, Motivation and Morale.
3. Hold the CEO responsible and accountable for performance and drill down into financial reporting, milestone objectives, architecture of a sale, gross margin attainment, market trends and issues, etc. Have the CEO update the business and cash plan each quarter to reflect the "Real World".
4. Have the CFO do detailed "Bottoms-Up" financial reporting and go forward forecasting on a weekly and monthly basis.
5. Continue to review the viability of the business model.
6. Insure that Intellectual Property development is actually on schedule, patents are issued on a timely basis, R&D personnel being kept motivated and in the loop with senior management and the Board. Too many times, what Stakeholders expect in IP is just not there.
7. Insure Communications with all parties on a timely basis.

Steven R. Gerbsman
Managing Principal Gerbsman Partners

The US SMS market: A reality, not just talk!

By Patric Carlsson, Wireless Market Specialist, Member of The BoIC

Sixteen to eighteen months ago, investors were questioning the US market's adoption of European and Asian consumer services including binary content, mobile communities, and participation in SMS votes and other mobile marketing initiatives. Some went as far as to claim that the US population would never want to do anything else than just use their handsets to talk. Since then, things have changed and the US market is pumping on all cylinders, adopting mobile entertainment services like ringtones, wallpapers, and mobile games.

When mobile operators, who traditionally have worked to maintain a monopoly within their networks, finally opened their networks to Premium SMS billing, a wide variety of content offerings like Jamster and Dirty Hippo launched. In addition, media outlets like MTV, VH1 and the National Lacrosse League have incorporated mobile content offerings to be promoted across available channels including the Web, broadcast, and live venues.

Time Inc. and other large media companies are testing the waters by asking for proposals or hiring mobile service companies to help them define a mobile strategy. This is a clear indication of a commitment and willingness to invest.

Some services have shown up to 700% increase per annum (American Idol broadcasts) and foreign companies are entering the US market geared to acquire market share. Two years ago there were very few foreign owned firms in the US mobile service market. Today, nearly all leading mobile content and service companies are owned by either Japanese or European interests.

The recent success of the US company MobiTV (Idetic) and handset manufacturers' release of MP3 phones (SonyEricsson, Motorola and Nokia) indicates that the next generation of networks will result in a plethora of music streaming and TV to handset services.

Opportunities Ahead

Rich media services

Regardless of format, mobile operators will adopt and promote "mobile iTunes" offerings to increase bandwidth usage on 3G networks. With the support of handset manufacturers, offerings will soon start to make its way out to US consumers. Vodafone has started this trend on select European markets, and companies like Melodeo are successfully showing both the record industry and the mobile operators how the music can be displayed and managed, as well as indicating what the revenue models might look like. Apple and iTunes may find its market through the MVNO (mobile virtual network operators) structures, where content providers have more control.

Mobile Communities

Mobile phones are an inviting medium for extended dialogue and personal preference based applications. The basic human need to socialize is a strong driver. The Web has shown strong community creation through blogging, social networks and editorial coverage. TV and broadcast companies have embraced these technologies to create communities based on interest or geography. It is a natural fit to extend the social communities into rich environments like Java or Flash, enabling strong brand design with interactive components like chat, search and other mobile interactivity. Look for the youth focused mass media to fully embrace broad mobile service offerings including subscriptions, voting, blogs and chat. With the addition of content and commerce, revenue per user might increase by $10-$15 within 6 to 9 months from launch.

Conclusion

Current market leaders have enjoyed the limelight of acquisitions with mergers highly focused on content creation and distribution. The second wave of successful companies is emerging with technology offerings utilizing XML formats that automatically extend current editorial content into multiple formats including SMS, MMS, WAP and J2ME. They also offer a wide array of social game applications for flirting and dating, brand interaction, and social networking. An even larger opportunity is on the horizon for firms who can manage the complete mobile offering for media companies and support them with a cross platform offering of content through the Web, print, radio and TV. A second significant opportunity might result from Adobe's acquisition of Macromedia. Macromedia have enjoyed substantial market traction with customers including Nokia, Samsung and Vodafone. Together with Adobe they should be able to strengthen their position. Flash Lite can become a dominant platform for branded advertising offerings and interactive service offerings due to it's portability between devices, the fact that Flash standard supports the creation of media preview portals, and because purchase and billing can be handled via Premium SMS or other available channels.

As evidenced by the recent announcement of Yahoo's new music service it looks like we are indeed heading into a "music like water" future that is outlined in my book "The Future of Music" www.futureofmusicbook.com. Apart from the growth of the legal music services such as Yahoo, Napster and iTunes, there are more people in more places around the globe that are tuning into music with more enthusiasm and sheer determination than ever before, and they are using a myriad of their own particular ways and means to get what they want. But to a large degree the "traditional" record industry is simply no longer invited to the party. The bottom line is that consumer empowerment has finally reached the music business, and many consumers have now taken charge of their own entertainment resulting in a huge "2nd wave" opportunity for investors, documented by the most recent deals with SnoCap, AudioFeast, Mercora and Savage Beast.

Music fans (or, in Silicon Valley speak, "Users") tune into online radio, buy satellite radio receivers, record terrestrial radio broadcasts onto their PCs, rip (copy) CDs checked out from libraries, swap tapes, vinyl records and CDs via the Internet, trade files on Instant Messenger, exchange entire hard-drives of music, fire-wire playlists to each other, trade loaded iPods, buy or create their own ringtones, transcode music streams provided by online radio stations, distribute or trade files on a multitude of P2P networks, topsites and darknets, edit samples and loops with free audio software tools, buy games and videos that feature their favourite music, tune into music shows on television and record it with their TiVo, and stream music to their cell phones. And all of this is just the tip of the iceberg. We could probably continue this list for the next couple of pages, but one thing is for sure: Music is BIG, again.

The trouble for the record industry, and the good news for investors, is that these are mostly non-traditional ways of using and getting music. The industry can not control this as well as CD sales during that glorious 'top-down' past. Therefore, the entire system is starting to crumble. A system that is all based on total and relentless control, obscenely high margins, and an amount of customer passivity and user sacrifices that is unparalleled in any other industry. And things are getting worse, yet: technologists and entrepreneurs all over the world will continue to invent new ways to find, discover, share and consume music every other day. The cat, or rather, the MUSIC, is quite literally out of the bag, and – as my dear colleague and pho-master visionary Jim Griffin likes to say – nobody is going to succeed to put friction back in a frictionless world, much less make a strong business of it.

The only thing left to do, and the huge opportunity for new ventures in this turf, is to monetize the existing behaviour of the user / consumer / music fan. There are many ways to do that once we have accepted the fact that we have indeed morphed into a customer-driven, bottom-up world that renders many widely accepted "analogue" paradigms and traditions instantly useless.

Now, once we go down that inevitable path we will quickly realize that actually metering the use of music on a per-unit base, as if we were still in the days of Colonel Parker and Elvis Presley, is simply becoming a "mission impossible". Notwithstanding the distinct possibility of precisely tracking what is actually used, and distributing exact royalties accordingly, there is no way we can continue to ask for fixed fees on a per-track basis, when it's no longer even clear what a copy, a download, a performance or a mechanical actually is. On digital networks, just about any performance creates copies, somewhere along the way, and every copy is being publicly performed somewhere (witness the latest discussions about 'timeshifting' music). This may sound a bit Orwellian, but it sure creates a significant transactional dilemma: a performance may be considered a copy that may be downloaded and that may be transferred to some people under certain rules … simply an unworkable Babylon of outmoded business rules.

The argument reverberates in the latest definition of "music purchasing" on the Napster-2-Go (U.S.) download service: the user can download as many tracks as desired, as long as the subscription is valid, and the tracks are not used outside of the Napster application and the computer it is installed on. Amazingly, and quite conclusively already tilting towards the Music-Like-Water model, these downloads are not considered purchases – at least not until I want to burn a CD with them, and therefore own them "free and clear". Clearly, we have already reached and crossed that border between performance and copy, between access and ownership, and pushed it further out to a more economically feasible and much more palatable place. Hats off to Napster for pushing the envelope (now try to monetize your brand ;)

But the bottom line is: the only way to monetize people's actual behaviour and underlying desires on digital networks is to give them a simple, no-brainer blanket deal, an all-in offer or a flat-fee bundle - without wanting to sound like the UK's EasyGroup's Stelios: make it EASY. Call it what you want, but the conclusion is that this is a subscription model not a "pay per download" model. One payment has me covered, but in addition I have many opportunities to spend my cash on many other things. Call it subscription, bundles, flat fees – that's all just a variation of the same subject. Music-Like-Water is where we are going, and up-selling to additional services is the name of the game.

There's plenty of precedent here: we make automatic, habitual, seemingly "thoughtless" yet fully accepted payments for water, gas and electricity bills. We pay for cable television, Internet access and wireless services; and here in Europe, we are paying a flat yearly fee for the use of any devise (radios, TVs) that can receive public broadcasts. And most of us pay quite happily for our utilities and subscriptions! Imagine if you were asked for your ID and password every time you flushed the toilet at a public bathroom, or if the TV would measure and bill the numbers of hours that you spend in front of it, or charge you more if 10 people watched the hockey game rather than just you alone. Economically speaking, 99% of us already make these kinds of payments, all the time, and the pool of cash that's being generated is VAST.

So, consider this: a much lower monthly payment, say $3, something akin to a "content fee" imposed on some hardware or devices, and some services or transactions would get us there, just as well, and we would finally have a feels-like-free pass to do what many of us seem to already be doing, albeit with official blessings. Enjoy our music where we want, when we want and how we want, without having to worry about RIAA agents hunting us down, ad-ware loaded software on our PCs, which DRM is used, which country or state or city we are in, which files in what format are actually complete and don't have viruses in them, which Operating System we use, which devices are compatible with which PC and which application, and on and on. Of course, that $3 may end up being €3 in Europe, 3 GBP in the UK or, more importantly, the equivalent buying-power amount in other territories such as India, China, or Brazil.

If we do not go down this road, how could we possibly expect the music industry to be successful in the future, when at this very moment the customers have to practically kill themselves to give the industry their cash, on the exceedingly narrow terms that are being enforced today?

Once we can subscribe to music just like we subscribe to water, the music business will EXPLODE and we will enter a new ecosystem that will make the previous music industry look like NY taxicabs from the 30th floor of the BMG building. DRM will morph into CRM, copy control will become usage-control (file-tracking and monitoring), record labels will morph into 360-degree music companies, radio will down-(load)-cast, devices will truly plug-and-play, and yes, cell phones +music will likely kill the iPod.

There's only one thing: we MUST stop asking the consumers to fill up their bath tubs with Evian, or to use Pellegrino to boil pasta – they have already discovered the tap water! So let's just sell them tap water, via cheap flat fee deals, AND the Pellegrino, as well – and this does not equal a flat-out, whole-sale devaluation of music; quite the contrary. Ubiquity is a very powerful thing, and will create a nice pool of money for all involved parties – a pool which will only be the very first starting point for a much increased monetization of music.

Here is another thing that will happen when the water/music flows freely: the up-selling opportunities will be huge, diverse, and multi-channel – and this is where the ROI for investors are. We will have all the user data we could ever dream of having: opt-in profiles and lots of user feedback, usage patterns, program preferences, personal profiles, locations and access modes. Apart from the obvious concerns over data security and privacy (now there's another huge business opportunity!), this data will allow the content providers / rights holders to zero in on one person at a time, and offer relevant and timely upgrades to him / her, and maybe to place very unobtrusive and friendly product messages. Imagine listening to your digital radio station while you're driving, and seeing a message on the display informing you of an upcoming show of your favourite artist that just happens to be in a location that you will be traveling to. Simply push a button on the display, or send an SMS from your mobile phone, and within 10 seconds you have purchased a ticket for the show. Then, when you get to the show, you take up the venue management's offer to zap the entire evening's concert onto your memory stick on the way out, for less $ than the cab ride back to the hotel. And on from there…

Once music is unleashed and the "dinosaurial" fight for the simple privilege of having access to it is over for good, distribution seizes to be a barrier to entry: all music all artists and all writers will be in those pipelines. Then, however, artists and their representatives will be facing the real challenge: getting anyone to pay attention to them, and surviving in this world of "digital Darwinism", since the old marketing mantra of Exposure + Discovery = Sales (Income) will be even more pronounced in a Music-Like-Water world. Ultimately, of course, people will consume, or shall we say, use more media (music) all the time, but the real limiting factor is people's TIME. Simply put, all of the world's music (and its creators) will be competing for attention in this new ecosystem, and everyone will want a piece if your precious time. THAT will be the real challenge going forward: getting exposure and being discovered – the rest is already build into the pipeline.

In other words: "*The future is already here - it's just unevenly distributed.*"
~ William Gibson

Chaos in the Advertising World

By Hans Ullmark, Chairman /CEO, Collaborate Communications, Member of The BoIC

Just about everything has changed. And what hasn't changed, is about to. There's chaos out there in the world of advertising and communications. Agencies are struggling to understand where the industry is going and what clients want. Clients, that is, marketing and advertising management, are being pushed to re-think how they handle their tasks, with the requirement to do much more with every dollar invested.

But, you say, the economy is improving and ad spending is increasing after several years of decline. True, but the changes we've seen in these years after the dot com crash in 2000 are very much here to stay.

Let's start with the good.

Accountability and marketing metrics are the new mantras. It's about time. Go back to the end of the 90s when the focus was on building brands, very fast. One of my colleagues in Europe proclaimed he'd build a brand in nine days. Just give him the right budget and he'd promised to make the client's company famous. And clients responded by pulling millions of VC money out of their pockets. The agencies willingly participated in this silly game that had nothing to do with real business.

Then the VC money dried out. Even the well-funded and profitable bricks & mortar companies decided to change their ways of spending money on advertising. Building brands became a major no-no. Every dollar was now supposed to generate leads or store traffic, even if the company actually needed increased brand awareness.

Many advertisers moved away from the traditional print and broadcast advertising, and invested heavily in web communications. Often for the simple reason that it was accountable, or at least, it could be measured. Maybe it measured the wrong thing, but still it was better than spending the money on intangible initiatives such as classic brand-related advertising.

After a few years into the new world, we're now heading towards a situation of a little more balance again. Where those who need leads and store traffic have seen that it takes a broader set of activities to generate true action from buyers. And where those who need to build brand equity strive to measure the progress and the effects it has on the bottom line.

This is good. This will help marketing and advertising management get their act together and make a case for the right level of spending in front of their top management.

Another insight stated by one of my clients: "I now realize that building brands calls for much more than traditional advertising and public relations. I might even be able to build brands without those classic tools." And I concur.

However, the key to brand-building is in analyzing all the touch points between the consumer / buyer and the company. How those touch points are managed will determine how well the brand is being built. New exciting media opportunities are exposed every day. Take blogs. A year ago no one saw them as a marketing opportunity. Today even General Motors is playing the blog game. Or take branded content. Certainly nothing new in marketing (remember sponsored TV shows in the 60s), but the new forms of branded content are far from subtle. Case in point, Trump and The Apprentice with its over-the-top push for his casinos, buildings, golf courses and bad hair cut.

So what about the bad?

The lack of Big Ideas and great creative is alarming. It's as if agencies have lost their ability to convince their clients that creativity is not a commodity, and that there is a dramatic difference between a great idea and a mediocre one. One of the best examples of poor understanding was a large technology company that asked their Marketing Commodities (!) Manager to conduct a search for a new agency. Just imagine what their advertising looks like: pure vanilla, and I dare say, of questionable worth.

Why do agencies willingly play along by selling their hours as if there was no difference between the work of a talented creative team and a freelance rookie? The difference in quality is likely to be many hundred percent, but the price to create and produce might hardly differ. It is as if agencies and clients alike have forgotten what constitutes a great idea.

Many ad managers seem to believe that cohesiveness and consistency in graphic style is more important than an idea that will clearly differentiate the company or fuel sales. Cohesiveness around a mediocre idea makes it even worse. The formula is simple: start with a strong single-minded idea, then build a cohesive platform of touch points.

Agencies exist to add the magic that true creativity can bring to the client's business and brand.

In a perfect world.

In a perfect of world we'd all understand that great ideas produce better results. In a perfect world we'd find a way to measure how to spend the marketing and ad budgets. That way we are able to learn from everything we do, and provide top management with an ROI in marketing and communications.

On the other hand, in a perfect world I'd be the King of Sweden. Beware!

Knowing the Media Crucial to Communications Success

By Don Middleberg, Member of The BoIC

A recent Business Week cover story on the phenomenon known as "Blogs" told in breathless fashion how this new form of communications "will change your business". "Catch up or catch you later" is their advice. Sound familiar? Do I hear anyone saying this sounds like the early days of the Internet hype? While the internet unquestionably changed our lives, it did not put other forms of communications out of business. We still have all varieties of print and broadcast formats, plus enhanced telecommunications. That the world is growing more complex there is no question. That one form of communications dominates to the exclusion of any other just isn't the case.

So what is a public relations professional to advise? Simple. If your communications goal is to influence the influencers (i.e., people who motivate or convince others to a particular point of view, product or service) no one single approach works. In fact, it is STILL all about delivering the right messages to the right audiences through the right mediums. This means using multiple communications vehicles so that no matter which way your target audience turns they are seeing and hearing your message. Successful communications requires creativity and credibility. It is about real product and message differentiation, standing out from the back, being anything but boring and delivering on your brand's promise.

The explosion of media outlets demands that communicators have an in-depth knowledge of today's media and their ability to impact and motivate which target audiences. That the media is rapidly is changing is clear. To begin with, the picture for mainstream media is dismal. The Audit Bureau of Circulations recently reported that newspaper circulation has fallen by 1.9% over a six-month period. That is on top of drastic reductions in circulation over the last few years. Television is also changing dramatically. Just 15 years ago 70 % of viewers were tuned to the 3 major networks. Today that figure barely reaches 50%. While most adults still get their news from network television that number is shrinking sharply thanks to the rapid increase of internet usage. And, if that wasn't enough now come the Blogs—online journals where literally anyone can be an author and publisher at the same time, and at virtually no cost.

There are now millions of Blogs. The question is, do any of them mean anything? Can they influence people the way other mediums can? The answer: yes, a few important ones can. The problem, how can you identity and influence the right Blogs? The answer, most marketers simply cannot. Working in the blogging world is becoming another key specialty of public relations. Only someone who focuses in this new media can identify and communicate with the right blogs. This is not an area for amateurs. Even more recently, we are seeing the addition of video and radio blogs. Now anyone can also be a broadcaster.

While we might all long for the simplicity of the good old days, the complexity of the communications world today is the reality. For those of us who see the glass half full this presents enormous opportunities. Professionally managed, the new rules of communications means unprecedented opportunities of capturing share of mind, market share, and new levels of growth and income.

Protecting and Leveraging Your Intellectual Capital

By Andrew J. Sherman, Esq. Dickstein Shapiro Morin & Oshinsky, Member of The BoIC

CEO's and business leaders around the country may be guilty of a very serious strategic sin: failure to properly protect, mine and harvest the company's intellectual property. From 1997 to 2001, billions of dollars went into the venture capital and private equity markets and the primary use of these proceeds by entrepreneurs was the creation of intellectual property and other intangible assets. In many cases, four years later, however, emerging growth and middle market companies have failed to leverage this intellectual capital into new revenue streams, profit centers and market opportunities because of a singular focus on the company's core business or a lack of strategic vision or expertise to uncover or identify other applications or distribution channels. Investors and tech executives may also lack the proper tools to understand and analyze the value of the company's intellectual assets. In a recent study by Professor Baruch Lev at NYU, only 15 % of the "true value" of the S&P 500 was found to be captured in their financial statements. This gap in understanding points out the critical need for a legal and strategic analysis of a portfolio company's intellectual property portfolio.

To begin uncovering hidden value, venture capitalists should strongly urge their existing portfolio companies to go through the process of an intellectual property audit. Venture capitalists should also consider incorporating some elements of an intellectual property audit into their diligence for potential investments. The intellectual property audit will examine the company's intellectual asset management (IAM) system (if any), ensure that the intangible assets of the company have been properly protected and most importantly, will serve as the starting point for the strategic planning exercise which will be focused on identifying ancillary applications and markets for the company's intangible assets, which could create new income streams and profit centers for the company via licensing, joint ventures, strategic alliances and even business format franchising. The intellectual property audit and strategic planning process based upon the audit results will increase shareholder value by ensuring that the highest and best uses of the company's intangible assets are pursued – which could also be part of the turnaround or restructuring plan of a troubled portfolio company or which could serve at the core of the value proposition in positioning a portfolio company for sale.

Understanding The Various Types of Intellectual Property

As an entry point into the strategy of leveraging IP assets, an appreciation of the different types of assets and their licensing characteristics is useful. The corporate intangible asset inventory may include trade secrets and know-how, trademarks and trade names, patents and patent applications, and copyrights. In situations involving semiconductor chip companies, a type of federally registered right known as "mask work" protection may also be involved. The range of intangibles that may be included under each of these broad categories encompasses almost anything of worth a company knows, writes or does.

Trade Secrets and Know-How

While trade secrets, considered collectively, often comprise the prime IP asset a company owns, the protection regime for such IP, unlike patents, trademarks or copyrights, trade secret protection is not based on a federal statute. Trade secrets are unpatented bodies of information that lay outside the public domain. Products, or the way they are made, may be (or at least include), trade secrets. Formulations, such as the concentrate for Coca-Cola, may be immensely valuable trade secrets. The processes used by an enterprise to make products or to manage itself may qualify as trade secrets. For example, material sources, marketing plans, distribution techniques, customer information, product specification/tolerances, best methods and practices, franchise management protocols, all qualify as trade secrets. Tweaks and modifications to improve equipment, even off-the-shelf equipment purchased on the open market, may qualify; as do the fruits of the R&D operations: blue prints, test results (even unsuccessful test results are protectable), designs, data bases. etc. Know-how is a first cousin of trade secrets but far more difficult to inventory as a discrete IP asset; it is an accumulation of information, knowledge and experience (some of which may qualify as trade secrets, some not) that enables its possessor to achieve practical results which can not be obtained by one not possessing it. Know-how is the essence of what make a company's most valuable employees valuable. Trade secrets and know-how, unlike patents, may be licensed in perpetuity. The quid pro quo for the licensee's payment is disclosure and access to the technology.

Trademarks and Trade Names

The most basic definition of a trademark (or servicemark) is any word, symbol (or combination) that distinguishes the goods (or services) of one business from its competitors. While rights in trademarks are acquired by use, registration certainly makes it easier to enforce those rights. Valuable trademark rights can be easily lost; all that needs happen is that the proprietor allows the mark to lose its ability to distinguish its goods from competitors goods. Witness "aspirin", "nylon", "zipper", "cellophane", and "escalator". Most businesses only use their marks in connection specific good and/or services. For truly famous or recognizable marks, this opens very attractive collateral marketing opportunities, often referred to as "merchandise licensing" or "character licensing" which we discuss below. Trademark proprietors must be careful when licensing to avoid killing the goose that lays the golden egg. Any loss of control by the proprietor over use of the mark could be fatal.

Patents and Patent Applications

We will assume basic familiarity with patents as a federal statutory scheme that confers upon inventors the exclusive right, for a limited period of time, to make, have made, use, sell, offer for sale, or import anything that falls within the scope of the claims issued by the Patent & Trademark Office. Patent license agreements come in many flavors. Some are paid up when signed; some require annual payment, and some a running royalty based on activity. Some licenses are exclusive, some not. Some licenses permit sublicensing; some do not. One of the most interesting aspects of patent licenses in terms of their value as a revenue stream is how the exclusive right can be divided into discrete fields of use or into geographic territories. A patent owner can reserve for itself the exclusive right to use its patented technology against direct competitors (or in its geographic area of operation) while licensing fields in which it does not compete or operate. Patent licenses are often part of a "technology" license, which includes technology exchange, technical assistance, and transfers of know how. Patent licenses can also be used to gain access to valuable technology of others through cross licensing, especially where the licensor has a dominant patent position which can be used to leverage valuable rights to improvement technologies developed by others. Companies should, however, be careful that their efforts to exploit their patent positions with respect to certain markets or products to gain a position in other markets or products does not cross the line into impermissible “patent-tying.”

Copyrights

Copyrights are a frequently overlooked IP asset that is of obvious importance when dealing with computer software companies and content providers (such as publishers of music, movies, books, etc.). However, because one of the exclusive rights of the copyright owner is the right to prepare derivative works, copyright is often a valuable adjunct to technology or know-how licenses where the recipient will often want to develop materials (forms, letters, protocols, best practices manuals, etc.) based on those of licensor.

Conclusion

By making the company's intellectual assets the focus of its strategic planning, new opportunities are likely to be identified. The company's technology might be licensed into non-core, non-competing applications or industries, its distribution channels might be used for new products and services which are co-developed with others as via in-licensing transactions, its internal software management tools might be licensed to others within the industry (provided that competitive advantage is not lost), its employee training programs might have applicability or uses to third parties, its geographic expansion plans might utilize a business format franchising approach in order to preserve working capital, etc. In summary, there are many different ways to approach intellectual capital leveraging.

About Gerbsman Partners

www.gerbsmanpartners.com

Since 1980, Gerbsman Partners has focused on maximizing enterprise value for highly leveraged, under-performing, under-valued and under-capitalized companies and their Intellectual Property. Gerbsman Partners has also assisted numerous emerging growth and middle market companies develop and execute their financial and capital formation strategies, access the capital markets and provide for technology and life science strategic alliances and licensing of Intellectual Property. Gerbsman Partners provides the following services:

- Crisis/Turnaround Management
- Private Investment Banking
- Balance Sheet Restructuring
- Maximizing Value of Intellectual Property
- Domain Expertise – Technology & Wireless

Gerbsman Partners has been involved in transactions totaling more than $ 1.5 billion, in industries as diverse as:

- technology
- wireless
- bio-tech
- software
- apparel
- internet
- distribution
- telecommunications
- hotel/time share
- specialty retail
- manufacturing
- financial services
- natural services
- life sciences
- gaming

We have a wealth of experience in the capacity of "Crisis Manager" as acting "CEO" and "Chief Restructuring Officer", as a member of the Board of Directors and as an Examiner for the Office of the United States Trustee.

Thanks for taking the time to read this issue of The BoIC Talks. We hope you enjoyed it. Please visit our website for additional information and other publications or contact us at:

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