Key Strategies for Diversifying Revenue Streams in the Media and Entertainment Sector

A Klaris IP White Paper

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AUTHOR SPOTLIGHT

>> *Ed Klaris* has more than 20 years of experience in the media and entertainment sector, where he is a recognized expert on intellectual property, privacy, and media law. He has extensive experience in building revenue from content and other IP. As a senior vice president at Condé Nast from 2006 to 2014, Ed was in charge of all IP law and business strategy for 18 brands worldwide, and built and ran an $88 million business. Ed served as general counsel at *The New Yorker* from 2000 to 2006, and, prior to that, worked at ABC, Inc. as media counsel from 1997 to 2000. Ed has been teaching at Columbia Law School as an adjunct professor since 2005. Most recently, Ed founded Klaris IP, a leading intellectual property legal, strategy, and consulting firm, concentrating on media, entertainment, and gaming. Ed is also affiliated with DeSilva+Phillips, a leading investment bank, where he does mergers and acquisitions work in the media sector.

Introduction

Though there are many ways to succeed or fail in the media and entertainment business, one thing remains constant: A company's primary value lies in its intellectual assets. Such assets include its content (movies, TV shows, photographs, articles, and video and audio files), its trademarks (brands and logos), and its creative people. All of these must be handled with care if they are to produce the greatest possible returns and augment the company's total enterprise value.

Today's chief executives must build an organization focused on leveraging intellectual assets to uncover hidden revenue opportunities that will make their way to a profitable marketplace in new channels. This requires a commitment to innovation, through which the executive team creates a structure in the organization for the development of new revenue streams through a number of mechanisms. Media and entertainment companies are made up of many players—content creators, programmers, marketers, salespeople, technologists, financial experts, and lawyers—while the chief executive sits on top of it all, prioritizing goals, setting a vision for success, and motivating the corporate officers to optimize the business and generate new ideas.

Intellectual property (IP) is big business. According to the U.S. Department of Commerce, IP-intensive companies contributed $5 trillion, or nearly 35 percent of U.S. GDP, in 2012. More than 40 million jobs, or more than 25 percent of all U.S. jobs, are in fields supporting intellectual property. The global copyright and trademark licensing business alone tops $100 billion per year.

This paper is a concise roadmap, a strategic playbook, for helping corporate leaders appreciate the value of their intellectual assets and think through the development of meaningful lines of business in the media and entertainment sector.

Case Study

In 2007, Condé Nast Publications was one of the largest magazine publishers in the world. Its magazines—including *Vogue, Vanity Fair, Wired,* and *The New Yorker*—were category leaders known for their glossy luxury ads, award-winning writing, and premier photography. The company set records that year for revenue and profits, all from print advertising, subscriptions, and newsstand sales.

That same year, *Wired* hired Joshuah Bearman, a 35-year-old journalist, to write an article about a CIA mission during the 1979–1981 Iran hostage crisis. *Wired* paid Bearman for the article and reimbursed him for his expenses. The magazine edited and fact-checked the piece and illustrated it with photographs, finally publishing it under the title "The Great Escape" in the May 2007 issue. Everyone was happy with the article, and Bearman's profile was raised as the author of an important work in *Wired*, a very good credential.

By the time the article hit newsstands, *Wired's* editors had already moved on to plans for future articles and were consumed with putting out the summer issues. Though they considered assigning Bearman another article, they did not think much more about "The Great Escape." It was history, an ephemeral asset—good for the moment, but not needed for the future.

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Bearman, however, thought a lot more about "The Great Escape." He had a gem of a story in his hands, full of pathos, compelling characters, and intrigue, and it involved Hollywood. Its publication in *Wired* meant it also had a solid pedigree.

As it happened, George Clooney and Ben Affleck liked "The Great Escape," too. So Bearman sold them the movie rights to the article, and they created the movie *Argo*, produced by Clooney and directed by Affleck, who also starred in it. *Argo* went on to be nominated for seven Academy Awards and win in three categories, including Best Picture for 2012. The film also won Golden Globe awards for Best Director and Best Motion Picture. U.S. box office sales totaled $136 million, international box office sales reached $96 million, and U.S. DVD sales were $19 million. Total sales in 2012 for *Argo* were $251 million.

None of that money went to *Wired*. Nor did Condé Nast, its parent company, see any money when two earlier hit movies, *Brokeback Mountain* and *Adaptation,* were made from *New Yorker* articles, or when *Eat Pray Love* was adapted from a book that had started as an article in *Allure* magazine, one of the company's beauty titles.

The pain Condé Nast felt from missing out on the *Argo* opportunity was particularly acute. Between 2007, when "The Great Escape" was published, and 2012, when *Argo* was released, the magazine business had dramatically changed. In addition to suffering through a brutal recession, the print industry was in rapid decline, as advertising dollars migrated to digital properties such as Facebook and YouTube, which drew much more traffic than a magazine publishing company could muster.

By the time *Argo* came out, Condé Nast had dropped "Publications" from its name and redefined itself as not just a magazine company, but a media and entertainment company. The strategy focused on taking Condé Nast's strong brands and powerful content into new businesses that fit well with the values of its titles. The days when Condé Nast was happy to publish once and move on were over.

Condé Nast had learned its lesson, albeit the hard way. The company created an entertainment division in 2011 and hired executives from the entertainment industry to run it. Condé Nast Entertainment was tasked with developing motion pictures from articles in the magazines, creating scripted and unscripted TV, and producing digital video based on the brands. Each magazine would create programming in line with its particular content and character: *GQ* produced *Casualties of the Gridiron*, a series of video profiles of former NFL players who had suffered concussions, and *Wired* created *Data Attack*, a TV series featuring "fascinating facts" about a variety of topics. Condé Nast also created a licensing division, which struck deals for *Teen Vogue* bedding and *Modern Bride* jewelry at JCPenney, and launched efforts to use archival content in profitable ways and expand the international footprint of the brands by opening media businesses in new countries. The overall goal was to extend the brands and content into as many new areas as possible.

Condé Nast is not alone in its campaign to diversify revenue and find synergies for its products across media, channels, and devices. Jessica Simpson has used the celebrity she earned in music to build a billion-dollar licensing business, with scores of product lines that bear her name. Disney's *Frozen* characters have stepped off the screen into toys, games, videos, books, clothing, and much more. All of these efforts demand thoughtful planning, strong corporate management, and creative strategy.

IP Matters

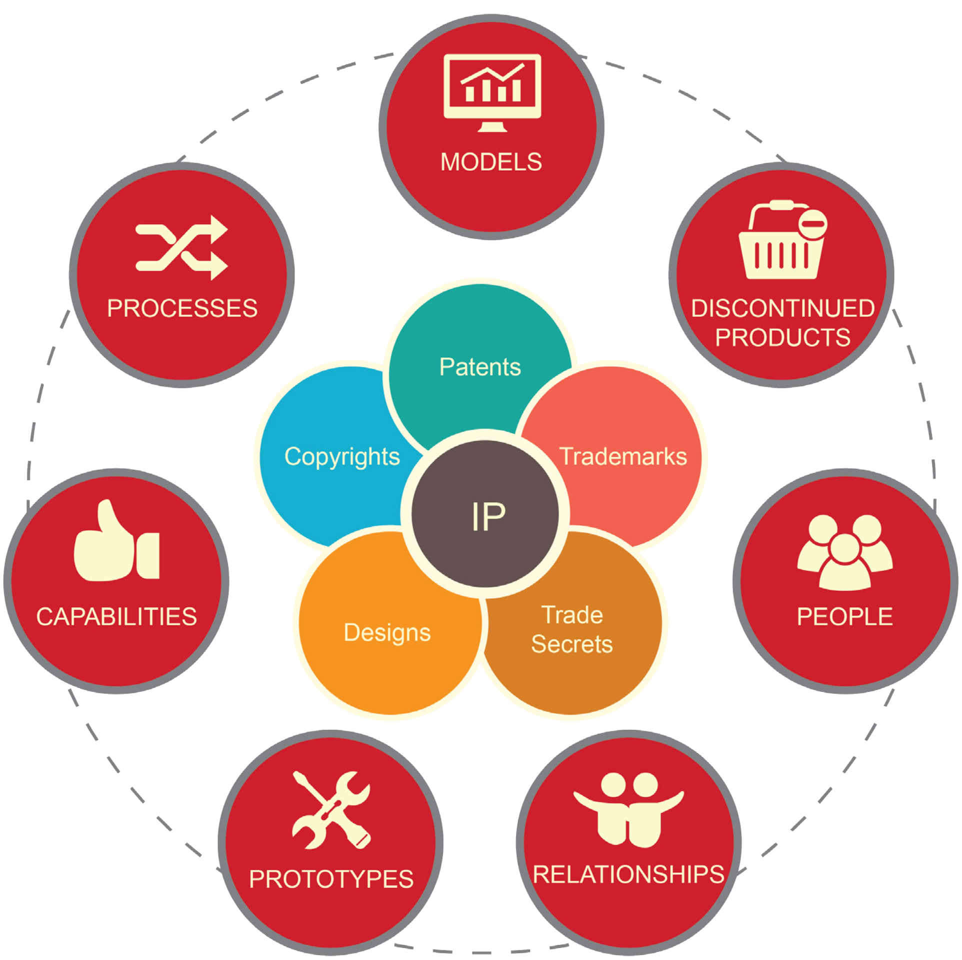
Copyright and trademark strategy has long been characterized by a dual image of the sword and the shield. As a sword, the law can be used to attack a party who seeks to exploit some aspect of intellectual property in a way that violates the holder's rights (e.g., music and movie piracy or knock-off Gucci bags); as a shield, the law can help stave off the attacks of competitors.

The sword-and-shield approach, which tends to relegate strategic thinking to lawyers, is no longer enough. Strategy must also include CEOs, salespeople, and marketers. The most ambitious, innovative, and authoritative executives must be engaged in thinking about intellectual assets not just from the perspective of protecting the company jewels, but with an eye toward growing the business. In an economy increasingly fueled by intellectual assets, both corporations must consider copyrights and trademarks in terms of the boardroom, not the courtroom. The many elements of an intellectual-asset portfolio can be seen in Figure 1.

Underlying the *Argo,* Jessica Simpson, and *Frozen* examples are matters of intellectual property—this is what movies, articles, and brand names are. Thus, when seeking to monetize these intellectual assets, a core strategy must take into account the intricacies of copyright and trademark. Disney CEO Bob Iger, who was general counsel of ABC before moving up in the ranks, owes his skill, at least in part, in identifying business opportunities in movie characters to his keen appreciation for IP strategies. The current owner of the Jessica Simpson Collection, Sequential Brands, is a licensing specialist, with extensive experience in diversifying revenue from trademarks.

Trademarks are words or phrases, symbols or designs—or some combination of these—that identify and distinguish the source of the goods of one party from those of others. *Frozen* and the Jessica Simpson Collection are trademarks, identifying the products and giving value to the companies. Copyrights designate original works of authorship,

INTELLECTUAL ASSETS AVAILABLE TO LEVERAGE (Figure 1)



TRADEMARK DEFINED

- A word, phrase, symbol, or design that identifies and distinguishes one source of goods from others.
- There are five types of trademarks: fanciful, arbitrary, suggestive, descriptive, and generic. Fanciful marks are the most protectable; generic marks are the least protectable.
  - Fanciful: Exxon, Adidas
  - Arbitrary: Apple, Amazon
  - Suggestive: Microsoft, Coca-Cola
  - Descriptive: Sharp, International Business Machines (IBM)
  - Generic: e-mail, tissue (Kleenex)
- Trademarks must be used continuously in commerce. They last forever.

COPYRIGHT DEFINED

- A form of protection provided by the laws of the United States for "original works of authorship."
- Includes literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations.
- Copyright protection does not extend to any idea, procedure, process, system, title, principle, or discovery.
- Names, titles, short phrases, slogans, familiar symbols, mere variations of typographic ornamentation, lettering, coloring, and listings of contents or ingredients are not subject to copyright.
- Copyright lasts for the life of the author, plus 70 years or 95 years after publication by a corporation.

including literary works (fiction, nonfiction, and computer programs); musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; motion pictures and other audiovisual works; sound recordings; and architectural works. Copyrights give the owner (i.e., the originator or the assignee) the exclusive legal right to print, publish, perform, film, or record literary, artistic, or musical material, and to authorize others to do the same.

A movie company, music label, magazine publisher, or licensor of a sneaker brand must think of IP as an asset class that can help the company accomplish a range of goals, from accessing new markets to improving existing products to generating new revenue streams. In a media or entertainment institution, the value of copyrights can reach into the billions of dollars. The value of that asset class goes beyond simply allowing the lawyers to litigate or the accountants to enter their worth on the balance sheet. Companies ought to think broadly and creatively about how to invest in the organization's IP asset base, and how to make the most of it.

Many CEOs of media and entertainment companies may argue that they do think hard about the books, TV shows, and software they produce, pointing toward their work with sales and marketing departments and their efforts to develop technological capacity. This is all probably true. Nevertheless, it is also crucial for a CEO to know specifically what part of a movie or TV show the company owns, how many times it can be used, and where it can be distributed. Those are legal questions, and are too often limited to the legal department, when in fact they have significant implications for the overall business.

An IP monetization strategy calls for looking at the valuation of IP assets in a new way. This could involve licensing what the company already has in its IP portfolio (its archives), acquiring more IP, building new business lines using the company's IP, or perhaps giving away some of the company's rights for long-term strategic reasons. For example, Hasbro recently decided on an IP strategy that included permitting kids to create and sell their own Hasbro toys, such as My Little Ponies, using 3D printers. The chief marketing officer of Hasbro said the company was "opening up" its intellectual property to give "authors and designers an opportunity to create with us." That was a considered—and arguably risky—decision: Hasbro chose to sheath its sword and allow fans to infringe on its IP rights for long-term strategic gain.

This type of monetization initiative should be the purview of the top people in the organization, with the lawyers in the room to help navigate the path. Some non-lawyers are put off by the very concept of licensing, but it is essential to understanding the power of IP within the business of media and entertainment. Every single piece of IP contains a bundle of exclusive rights,

FOUR PILLARS

KNOW
Assess, prioritize, and order intellectual assets.

PROTECT
Acquire adequate rights and register and enforce the IP.

VALUE
Value IP and related data by recognized financial methods.

MONETIZE
Build through innovation, buy through M&A, or partner through licensing and joint ventures.

and the owner faces a choice—to sell the asset outright or lease it with conditions. Such conditions might limit use to a specific country or a particular digital channel, or require a royalty payment, or include a right to oversee the quality of the product or service. When, for example, HBO makes its programming available to a consumer through a local cable company, it is licensing its copyrighted material. If the consumer stops paying the HBO monthly fee to the cable company, the license will immediately be terminated, and the consumer will lose access to HBO's IP.

To get a bit more granular, the successful HBO original series *Game of Thrones* demonstrates how the IP associated with a single program can have a significant impact on the company's bottom line. To create the show, HBO had to acquire a bundle of rights from George R.R. Martin, who wrote *A Song of Ice and Fire*, the book series on which the TV show is based. In addition, HBO's series has spawned four video games, more books, and even a clothing line. Each one of those spinoffs had to be carefully thought through from the perspective of copyright and trademark.

Using IP to diversify revenue has value beyond the potential for high profit margins from licensing deals. The strategy can also achieve much greater reach for a company like HBO's characters and ideas. Through these deals, licensees pay for the right to spread the word about a show's characters. As long as an entertainment company makes good choices about its licensees, the net effect of licensing is not just money but also greater value in the brand itself and more consumers returning to license programming. A sound licensing strategy drives both sides of the bottom line: the asset value of creative properties and the overall value of the company. For example, if Time Warner wanted to spin off HBO as a separate entity, buyers, lenders, and other strategic partners would look at the value of its asset base—its IP. If HBO had acquired adequate rights in *Game of Thrones* to exploit the program and generate meaningful returns across myriad outlets, its total asset value would be higher and more secure.

Licensing is not the only way to diversify intellectual-asset revenue streams. Companies often decide that it is better to innovate from within and develop new uses of trademarks or copyrights in the company portfolio. HBO, for example, has created HBO NOW, a new direct-to-consumer, subscription-based video-on-demand business. With HBO NOW, the company is not only licensing its programming through the cable companies; it is now diversifying its IP revenue stream by building a business that serves the consumer directly. A sound IP monetization strategy around programming, archives, and trademarks will position companies for high-margin royalty returns and greater market value.

CEOs looking for near-, mid-, and long-term value in their media and entertainment businesses must think strategically about copyrights and trademarks from the moment the first deal takes place. Lawyers and low-level managers should not be the only ones looking at those contracts, deciding what rights to acquire, where to register the trademarks, and how to keep track of it all. A company's highest-level executives should be in on these important discussions from the outset. Otherwise, the CEO may end up looking back with profound regret about missed opportunities to benefit from the next *Game of Thrones*.

Intellectual-Asset Strategic Evaluation Process

An effective business strategy to leverage intellectual assets in a media and entertainment company has a consistent flow. Corporate leaders must define the role of intellectual assets in the business. They must assess strategies around building, buying, and partnering by looking inward and to competitors for guidance. The intellectual-asset portfolio must be classified and prioritized depending on relative value, and it must be accessible through databases and other technologies, with tools to help speed innovation. The company must invest in technology and know-how, and, finally, it must assemble its intellectual-asset portfolio for optimal value.

Reports, business intelligence, and user dashboards can help alleviate stress and guesswork as they convey complicated IP data. In 2014, New York City subways added digital signs on station platforms to tell riders when the next train would arrive. Just having that information—knowing that the next express is five minutes away—relieves anxiety and builds confidence in the system. Simplified reports can do the same for media and entertainment companies grappling with multifaceted IP rights questions. Chief executives will ease the work of their employees and improve their bottom lines if they implement state-of-the-art technology to help carry out IP strategies and practices that otherwise risk ending up mired in convoluted processes. With the aid of technology and best practices for content management, the millions of videos, photographs, and music files typical of the intellectual-asset portfolio of large media and entertainment companies can be shared with an entire organization. Salespeople will also better understand what they sell and what has already been sold in a given territory or channel, while the marketing team will gain insight into new programs or products ready for release and content production teams will learn more about the success of prior ventures.

The legal department is usually tasked with digesting contracts into bite-size pieces of information that can be added to databases. For *Game of Thrones,* for example, an agreement with George R.R. Martin must be broken down so that a single query will reveal whether HBO has motion picture rights and what those rights cost. The technology can then provide reports, insights, and dashboards so that business questions can be answered quickly and easily. It should enable users to save, reuse, and share intellectual property and schedule reports for distribution via e-mail to various users and predefined groups.

Dashboards should also be created for each department, including legal, business affairs, finance, operations, emerging platforms, programming, and sales. For example, sales and marketing will need to know which content or trademarks are available for licensing or development. When meeting with clients, salespeople must be able to identify the IP that is available for use or sale, as well as how, when, and where it can be used. They must also be able to identify partial clearances (for instance, a stipulation that a piece of music may be used in a video, but only with a fee paid to Sony) and other obstacles. The sales group's reports should directly answer the sales manager's most urgent concern: "Can I make the deal?" The finance group should also be knowledgeable about the IP portfolio, receiving regular reports on assets, amortization, payments, revenues, and receivables schedules. This information will help finance executives do their jobs and facilitate communication with other departments within the company.

In the TV space, limits on available content are quite complicated, making clear business intelligence all the more important. A media or entertainment

STRATEGIC EVALUATIONAL PROCESS

company must have reports to track usage and revenue across all media platforms (linear, on-demand, digital, and mobile). These reports can identify untapped and underutilized revenue streams, show top and bottom performers based on revenue or views, highlight trends and patterns, and monitor return on investment throughout the content's life cycle. It is even possible to build reports showing buzz around social media to help inform company executives about a program's relative strength and potential.

Media and entertainment companies need insight into their content, their business partners, and their customers. All of this stems from a clear vision for leveraging intellectual assets and a strategy for diversifying revenue streams through smart business practices at the highest levels of the company.

Conclusion

Diversification of revenue in the media and entertainment business requires a wholesale rethinking of IP strategy that involves and optimizes all parts of the organization. The legal element of copyrights and trademarks is merely one component of the process. Appreciating all possible ways to dissect a brand or piece of content and license it to many parties around the world is a core business skill, one that deserves the attention of the executive suite, where funds may be deployed to purchase technology systems to make the entire company more productive. Growth through mergers and acquisitions, partnerships, new businesses, and exploiting assets currently in house all require leadership from the top of the organization, using sound processes and forward-looking vision. Communication among various departments does not always come easily, but through executive leadership and innovative technology, the silos can break down and business strategy using a company's core intellectual assets can thrive.

A media or entertainment company committed to innovation must be free to question old ways of doing business, to explore exactly how to go about diversifying revenue streams and figure out who at the company is best positioned to carry out the mandate. Companies must be ready to face the risks inherent in starting new businesses or moving content to new channels, and unafraid to invest in technology to ease the burden of managing a company's intellectual assets.

KLARIS IP

Klaris IP helps clients address their biggest challenge: growth through innovation, acquisition, and partnerships. The firm focuses on digital transformation, new product development, international expansion, and monetization of brands and content. Klaris IP's professional services maximize financial results for clients seeking to develop and execute IP strategies, strengthen and monetize IP portfolios, and establish and implement intellectual-asset management practices. Legal services include IP transactions, IP portfolio management, media law, libel, privacy, commercial speech, and more. For M&A, Ed Klaris, principal of Klaris IP, is associated with DeSilva+Phillips, a leading media investment bank.

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Since 1985, the world's leading media & entertainment companies have used RSG Media's expertise and software to maximize revenues from their content and advertising inventories. RSG Media's RightsLogic is the dominant media business rights management system; it lets content owners & distributors, gaming companies, IP licensors, and sports leagues manage and report on the content lifecycle, including acquisitions, sales, planning & scheduling, and associated financials. RSG Media's order-to-cash ad sales systems help clients plan and manage deals across all platforms quickly and easily. Its AdVant yield optimization suite uses advanced mathematics to optimize proposals, flighting, logs, and promos, significantly lowering liabilities while generating new revenues. RSG Media is headquartered in New York, with offices in London and Delhi.