

P2P MEDIA SUMMIT WDC
DISTRIBUTED COMPUTING INDUSTRY ASSOCIATION

Optimizing Value for Technology Companies

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OUTLOOK FOR TECHNOLOGY COMPANIES

- The pace of M & A activity increased in 2005
- The pace for 2006 appears to be headed for higher levels
- Significant increase in broadband utilization
- Growth in SMS, VoIP, ringtones, all digital media, blogging and vlogging
- We are entering "mobile" internet phase
- Availability of significant cash and reasonably priced financing
- Content companies are looking at new revenue models - content licensing is more prevalent
- The next 12-18 months will evidence a time of growth for technology companies

WHAT DOES THIS MEAN FOR P2P COMPANIES?

- All of this means that significant levels of consolidation should be anticipated:
 - Aggregation of digital music stores to enhance customer base
 - Content companies need to reduce the number of suppliers
 - P2P companies need to fill “gaps” in product line and find “end to end” solutions
 - Payment systems will shift to simplify internet transactions and eliminate cost
 - Nature of advertising will be affected as mobile/internet consumes more attention
 - There is need for elimination of costs (backbone/broadband cost)
- Consolidation will take various forms ranging from licensing to strategic alliance, joint ventures, mergers, acquisitions
- Consolidation is predicated on value

WHAT DRIVES VALUE?

- Sustainable revenue base and viable business plan
- Compelling product which is legally protected
- Organization – management/structure

REVENUE BASE AND VIABLE BUSINESS PLAN

Value Enhancers

Realistic financial projections

Viable marketing/publicity plan

Protected/up to date
functionality

Diverse customer base

Leadership in area of expertise

Barriers to entry

Borrowing capacity

COMPELLING PRODUCT/PROTECTION

- Protection of product through applicable legal principles
- Patents, trade secrets
- Trademark/Trade Dress; Copyright

WHAT ARE THE COMPONENTS OF IP WHICH CREATE VALUE?

- Patents – Ultimate question - does IP have the breadth/scope to sustain a protected path to exploitation and is it free and clear?
- What is the history of:
 - Developer/Inventor
 - Who funded development
 - Prior art
 - Opinions re: scope, infringement, prior art, right to use, searches, coverage/scope
 - Opposition (has patent survived challenge?)
 - Litigation/Infringement Notices
 - Licensing
- Make sure you can demonstrate the validity, breadth and scope of the patents – this is the crown jewel!

WHAT ARE THE COMPONENTS OF IP WHICH CREATE VALUE?

- Technological know-how
 - History
 - Identify key components of technology
 - Who created the technology
 - What measures have been taken to protect secrecy/confidentiality
 - Why is it not patented
 - History of use
 - History of licensing
 - In what form does the technology exist and how it is preserved
 - Policies and practices of target regarding technology
 - Right to practice without infringing patents (opinions)
 - Potential for “reverse engineering”
 - Potential of “submarine patents”

WHAT ARE THE COMPONENTS OF IP WHICH CREATE VALUE?

- Software
 - Originality
 - Opinion of noninfringement of third party patents
 - Open source issues
- Trademarks – Branding is essential
- Copyrights
- Domain names
- General
 - Obligation to pay royalties to third parties
 - Contingent payment obligations
 - License or other material agreements which may be affected by change in control, sale, exchange

ADDING VALUE THROUGH IP

- IP value will be enhanced through:
 - Legal protection
 - Security of information/data
 - Contingency plans for backup/redundancy
 - Internal IP policy/compliance (training)
 - Proper disposal

STRUCTURAL ISSUES AFFECTING VALUE

- Corporate organization
 - Compliance
 - Shareholder agreements
 - Succession
- Key employees- Employment agreements
 - Confidentiality
 - Noncompete
 - Key man insurance
 - Appropriate compensation levels
- Stock options – update plans and value
 - Note: there are significant changes to the law

IMPORTANCE OF BRANDING AND MAINTENANCE

- Define business strategy
 - cost in relation to competition
 - quality in relation to competition
 - growth versus profitability
- Shaping public perceptions
 - Distinguish from competitors
 - Control reputation; avoid stigma
- Feedback
 - Market and customer satisfaction
 - Know customer base to improve customer loyalty

EXIT MECHANISMS – GETTING TO THE PROMISED LAND

- IPO's are less likely to be useful as a means of exit until there is critical mass
- Compare:
 - 1996: 80% IPO v. private sale
 - 2005: 27% IPO v. private sale
- IPO entails significant compliance and cost which have increased in the last few years

WHAT DO YOU NEED TO CONSIDER TO MOVE TO THE NEXT LEVEL?

- Business model/Validation
- Customers/Business Partners
- Revenues/Burn
- Management
- Barriers

WHAT DO YOU DO WHEN YOU HAVE A MEETING WITH AN INVESTOR?

- Preparation
 - know your audience and recent investments
 - expect challenges; know weaknesses
- Business Model
 - recurring revenue
 - validation
 - show break-even
- Competitors
 - emphasize superior business model versus superior technology
 - avoid negative comments
- Customers
 - pipeline
 - payment history
- Milestones
 - justify spending
 - missed targets

WHAT IS THE DEAL/ WHAT ARE YOU LOOKING FOR?

- Existing lenders
- Past round details
- Amount of desired funding
- Amount of equity
- Management

CONCLUSIONS

- IP drives value
 - Documentation
 - Best practices
 - Protection
- Corporate structure should enhance opportunities – every document should be considered as critical to the process of sale or merger
- Exit strategies need flexibility and should be designed to provide appropriate parameters and certainty