media & entertainment
INSIGHTS
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THE LATEST NEWS IN MEDIA, ENTERTAINMENT & TECHNOLOGY LAW & BUSINESS

EDITOR'S CORNER

Welcome to the inaugural issue of ***Insights***! Our commitment is to provide news, commentary and "player" profiles that are timely, to the point and, above all, useful to entertainment professionals of all stripes. Our collaboration among Lord, Bissell & Brook, PricewaterhouseCoopers and Korn/Ferry promises a unique blend of perspectives from leaders in the legal, accounting and business advisory and executive placement sectors. So take a look, and by all means let us know what you like or don't like about our publication and how we can better serve your needs.

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A Post-Mortem On Convergence

by ARNOLD PETER of LORD, BISSELL & BROOK

The business press has announced the demise of convergence and declared a victory of old media over new media. Bill Simon, Chair of Korn/Ferry's Global Entertainment, Media & Convergence Practice, discusses many of the recent corporate changes that have generated such pronouncements. Indeed, much of the re-structuring has been significant, even monumental. However, like Mark Twain's death, reports on the death of convergence and the new media are not only premature but, at the end of the day, wrong. Convergence is alive and the new media continues to proliferate in unimaginable ways…thank you.

What happened is the marketplace's refusal to condone experiments in convergence and the new media that are unsound from a financial perspective. It is a simple proposition…faulty business propositions are doomed, whether they are new or old media.

There is a difference today from the 90s. Unlike the heady days of the dot.com IPOs, the Street today will simply trample any venture that is intrinsically unsound.

CONVERGENCE IS EVERYWHERE

"Convergence" is as overused as it is misunderstood. Under its classic definition, convergence occurs when various forms of media come together at a common distribution point. A common example is merging technologies such as television and the Internet to create a single distribution channel or vertically integrated content creators and content distributors (for example, a company like Disney produces a television program for its own network--ABC). We cannot stop at this definition.

Before a recent overseas trip, I stopped at a Bank of America Versateller machine. While the system was processing my need for cash, I experienced a short advertisement for a new reality-based network program. I was not offended by the advertisement, as the time would have been spent anyway waiting for my money. This is convergence.

One of the most popular attractions at Universal's Hollywood and Orlando theme parks is Terminator Two. This attraction is a confluence of a three-dimensional film, remarkable special effects and live action stunts. Another example of convergence.

A SOUND BUSINESS MODEL DRIVES SUCCESS

Examples of theme park attractions and an enhanced banking experience mean nothing to investors unless there is a sound business proposition supporting it. Presumably, Bank of America derives revenue, directly or indirectly, by sharing its customer base with advertisers. Similarly, by re-purposing an American film icon like Arnold Schwarzenegger and his Terminator character, Arnold enhances the value of his brand and bank account. And, Universal drives attendance to its theme parks. It is a win-win only because the underlying business proposition is simple, generates immediate revenue and is easily understood by all.

Unfortunately, recent history is littered with the carcasses of convergence experiments where the underlying business proposition was either not formulated properly or based on faulty premises. One struggling experiment is digital cinema. The technology exists today to deliver, via satellite, first run films to theaters, which can then be shown to theater-goers by way of digital projectors. The picture and sound quality is top-rate and the system is as immune from piracy as possible. Virtually everyone agrees that the technology works. The problem is that no one has yet figured out the underlying economics. For example, who will pay initially for the satellite links and the digital projectors…the studios, the theaters, or the owners of the technology…and how will the costs be ultimately passed on to the consumer. Until this problem is solved and the technology can be monetized in a way that makes sense, this new media experiment will probably not be deployed on a large scale.

LEARN FROM THE VANQUISHED

In the past, an experiment like digital cinema would already have been launched with great fanfare and amidst financial projections promising investors

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FIGHT OR SWITCH?

The Record Industry Sends Mixed Message On Internet File Sharing

by C. DENNIS LOOMIS of LORD, BISSELL & BROOK

Does the record industry want to embrace online music file sharing, with its vast potential as a new distribution medium and revenue stream, or crush it? The answer to date appears to be - yes to both. The unanswered question, however, is whether this parallel approach will ultimately advance or retard the music business' bottom line.

PIRATES ON THE GANGPLANK

The "crush" approach has so far received more public attention and apparent success. Though damage issues remain to be litigated, the interim injunctive relief against copyright infringement obtained by the Recording Industry Association of America in its highly publicized action against Napster has effectively eliminated that MP3 file swapping pioneer as a source of pirated tunes. RIAA litigation against the most visible heirs to Napster -- Grokster, KaZaA, Morpheus -- is achieving similar early success in the courts (though the "distributed network" architecture of these new services makes enforcement of court orders much more difficult, because there is no "central server" to be shut down, as with Napster and most other commercial Internet sites).

The lesson of these cases is clear, and should be the same in every nation that enforces basic copyright principles: downloading copyrighted music (or other) files without the permission of the copyright owner is illegal, and those who facilitate or enable unauthorized file sharing can be held liable and shut down.

Yet the best available information suggests that online free file swapping, if anything, is growing. As recently reported in the *Dallas Morning News*, a study by research firm Odyssey estimates that 40 million Americans are still using peer-to-peer networks at least 11 times a week, and the successors to Napster are attracting more than 3.5 million simultaneous users daily, far surpassing Napster's high water mark. These numbers suggest that conventional infringement litigation as a solution to illegal file swapping is at best a dike-plugging exercise, with new and bigger leaks outstripping the pace of closed holes.

The RIAA and its major label members, with a potential assist from Congress, are working hard to shift the balance. Industry representatives have of late speculated in the press (notably including a recent article in the Wall Street Journal) that lawsuits, hitherto limited to corporate or individual sponsors of illegal file sharing programs, may soon be initiated against individual consumers who have engaged in extensive file copying and sharing (or otherwise attracted the ire of copyright watchdogs, e.g. by conspicuous chat room evangelizing for "free music"). So far, however, no such industry complaints against private citizens have been reported. Certainly, the potential PR fallout from such record company prosecutions against their (at least nominal) customers is considerable.

The risks are similarly substantial from a more innovative tactic, namely, online sabotage. Users of free file sharing networks are increasingly encountering "spoof" files in place of the songs that they think they have downloaded. These spoofs may contain only a repeated snippet of the song, or perhaps nothing but static. Although there has been no official music industry acknowledgement of responsibility, many observers are convinced that the record companies, or their security consultants, are the source of these spoofs. The suspicion is that by planting spoofs, the industry intends to make it more difficult, time-consuming and frustrating to access music on the pirate sites, thereby driving consumers to the industry-authorized "pay" digital download sites that have been launched of late. (More on that shortly.)

These suspicions find support in the fact that U.S. Rep. Howard Berman, whose Southern California District includes many major entertainment companies, has recently introduced legislation to make it lawful for copyright owners not only to plant spoofs, but to take even more aggressive self-help action against online pirate operations (e.g., launching a "denial of service" attack which disables the offending server by flooding it with bogus inquiries). Without such legislated immunity, at least these more extreme acts of online sabotage would violate federal and state "anti-hacking" legislation.

It is far from clear that this proposal will become law. Even if it does, the potential for conflict with foreign laws is considerable. For example, the European Commission in April 2002 pro-

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untold fortune within an extremely truncated time frame. Those operating in the convergence and new media space must remember a few of the bitter lessons learned too late by a number of now out of work executives. In the fields of the vanquished, perhaps the most common element is the refusal to recognize that a new media concept cannot be squeezed into an old media business formula. Take, for example, the now discredited effort by the music industry to monetize online music sales in the same way it handled CDs. See Dennis Loomis' article on this subject. Other common themes that repeat include:

- Not enough (especially non-traditional) revenue streams
- A shoestring marketing and sales budget
- Overstating financial projections (especially burn rate and eventual profitability)
- Going at it alone (while ignoring strategic partnership opportunities that make sense for the business)
- Faulty or over reliance on other new technologies or infrastructures

While analysts and investors are willing to look for long-term results, they will no longer tolerate unrealistic financial projections or unrealistic business strategies. That is what is happening today…good business sense, not the death of convergence.

ONLINE RADIO ROYALTIES: The Day The Music (Might) Die

by C. DENNIS LOOMIS of LORD, BISSELL & BROOK

Librarian of Congress James H. Billington on June 20, 2002 resolved (at least for the moment) a controversy that has been roiling the Internet radio world for the past two years. He determined that effective September 1, 2002, enterprises (and individuals) that stream music over the Internet must pay a royalty of 0.07 cents per song, per listener, retroactive to October 1998. (Lower rates apply to non-profits.) The catch-up payment comes due October 20, 2002.

This culminates a process dictated by the 1998 Digital Millenium Copyright Act. The DMCA, among other precedent-setting provisions, provides that parties engaged in "digital transmission" of copyrighted music must pay "performance royalties" based on a "marketplace" value. The Librarian of Congress was tasked by Congress to ascertain the appropriate rates, and in turn established the Copyright Arbitration Royalty Panel to take evidence from the interested parties and make a recommendation. In February 2002, CARP recommended a basic royalty of 0.14 cents per song per listener, which Mr. Billington cut in half.

For the most part, his decision has produced howls of protest on both sides of the issue. The Recording Industry Association of America, which would collect and distribute the royalties on behalf of its record label members and their recording artists, complains that CARP got it right and the reduced rate is unfair to artists (not to mention the record companies that would retain 50 percent of the total royalties).

> Web radio supporters particularly complain that the royalty is structured on a per listener rather than a percentage of revenue basis. The result is that the royalty can and does substantially exceed total revenues for stations that have limited commercial support (which is most of them).

But the loudest, indeed apocalyptic protests come from the Internet broadcast community. This includes major radio broadcasters who also simultaneously stream their broadcasts, as well as the tens of thousands of independent, mostly "mom and pop" web-only radio stations. Both groups predict that unless the royalty scheme just announced is substantially modified, October 20 could be the day that Web music dies.

The numbers suggest that this is not mere hyperbole. Assume a web radio broadcaster plays 12 songs an hour, 10 hours per day, with 1,000 listeners. The annual royalty would exceed $30,000 -- more than total annual revenues for many, if not most of these small operations. If that station had been on the air since 1998, the bill on October 20 would be over $120,000.

Web radio supporters particularly complain that the royalty is structured on a per listener rather than a percentage of revenue basis. The result is that the royalty can and does substantially exceed total revenues for stations that have limited commercial support (which describes most of the them). CARP adopted the per song model under its DMCA-imposed mandate to set a "real world" market-based royalty because up to that time, there had only been one real-world negotiated streaming license, between Yahoo and the RIAA. But Mark Cuban, founder of Broadcast.com (acquired by Yahoo in 1999), reportedly has admitted in an interview with Kurt Hanson, publisher of the "Radio and Internet Newsletter," that the Yahoo/RIAA royalty deal was structured on a per song basis precisely to create a barrier to entry for small webcasters, who couldn't afford to stay independent in a per song royalty environment.

The San Jose Mercury News reports that more than 75 stations went off the air just from the June 20 royalty rate announcement through the end of July, more than two a day, according to the "Save Our Streams" Web site. Live365.com, which offers hosting services to small Web radio broadcasters (think "All polkas, all the time"), announced that if the royalty stands, it will have to charge its clients a $5 per month fee, which it predicts will reduce the number of stations on its site from the current 25,000 to about 5,000.

Traditional broadcasters too complain that the royalty will cause them to cease streaming simulcasts. George Bundy, CEO of research firm BRS Media, said in the *Washington Times* that the number of streaming simulcast outlets fell from 5,598 in April to 4,557 as of July.

They complain not only that the performance royalty is too high, but that it exists at all. Over the air radio broadcasters do not pay any performance royalty, based upon the premise, long ago adopted by Congress, that radio broadcasts promote and stimulate record sales, which is compensation enough for the labels and their artists. (They do pay a songwriter (aka a "publishing") royalty, but it is computed as a percentage (about 3 percent) of revenues, not on a per-listener basis.) The broadcasters argue that the same logic should exempt them from the DMCA streaming royalty. The National Association of Broadcasters, as well as industry majors Clear Channel, Cox and others have recently filed an appeal to the Third Circuit in Pennsylvania from a U.S. District Court decision rejecting that argument.

A bill introduced in late July by Rick Boucher (D-Va.), Ray Inslee (D-Wa.) and George Nethercutt (R-Wa.) would exempt small webcasters (fewer than 500 employees, less than $6 million annual revenues) from the royalty for one year. Kevin Shively, director of interactive media for Beethoven.com, one of the largest web classical music stations, describes the bill in the Mercury News as "basically a stay of execution for Internet radio." The RIAA strenuously opposes the legislation. In any event, Congress would have to work very fast to put this lifeline in place before the October 20 day of reckoning.

Webcasters believe that the RIAA push for high streaming royalties is not just about the money. They fear that the music industry views streaming radio as one more avenue for pirate copying of free music, and that the record companies would be just as happy to see the medium wither. (See the accompanying

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Independent Film Financing

In Search of the "Next Big Thing"

by BEN SHEPPARD of PRICEWATERHOUSECOOPERS

The market for independent film financing has been in a depressed state for some time. A number of industry veterans indicate that the current market is one of the worst they have ever seen, especially following a period in which financing was readily available and a steady stream of independent films was being produced.

An independent film producer typically obtains more than 80 percent of production financing from a combination of foreign and domestic pre-sales, government-provided subsidies and tax shelters, gap loans and private equity. If significant pressure is placed on one of these financing sources, it becomes even more difficult for filmmakers, especially newer talent, to bring their vision to life on celluloid or digital video. Is there any good news to be had? What factors might signal a recovery of sorts?

FOREIGN PRE-SALES UNDER PRESSURE

To answer these questions, it is important to understand how we got to this depressed market. Many observers point to a decline in the foreign television market as one of the more significant culprits. Bill Shields, former chairman of the American Film Marketing Association (AFMA), notes that, "foreign television drives market prices for independent films."

In the past few years, Germany became a key pre-sales target. Shields points out that prior to recent troubles in the German television market - with the failure of Kirch Group/Premiere in particular - a producer could typically expect to receive German pre-sales representing 15-20 percent of their budget, which would account for close to one-half of expected total foreign pre-sales. These days, "even with hat in hand," a filmmaker is lucky to hit the five percent mark. He also cites the Japanese market as being particularly tough, with these distributors allocating less money to acquire distribution rights for independent films, and in the process becoming more selective in the features they choose.

The dearth of foreign pre-sales has put a strain on traditional gap financing, making it more difficult to obtain the necessary collateral to satisfy the banks' pre-funding requirements. The current mantra may well be if you cannot sell the film, do not make the film.

FOREIGN TAX SHELTERS

Another factor leading to the decline in independent film financing is the softening of the German tax shelter investment market. These tax shelters provided several billion dollars to help bridge funding gaps for many independent and studio-produced films.

Typically, tax shelters and subsidies provide benefits for the independent film producer if the respective film is shot in the territory and/or the production employs some indigenous talent.

The German tax shelters were valued because the funds could be used for any film, regardless of where it was shot. This aspect has come under political scrutiny within Germany, especially considering that some of the initial German investment funds did not fully recoup. As a result, it is likely that more restrictions could be placed on how the German tax shelter funds may be used in the future. Although tax shelters and subsidies remain available in other territories, producers would not be able to take advantage of the geographic flexibility afforded by the German tax shelters.

Perhaps the abundance of funds provided by the German tax shelters masked what appeared to be an oversupply of independent films in the marketplace. Independent filmmakers cannot be blamed for driving up prices in the German television market, but it is believed that the multitude of available product is helping to keep current prices low. While we are seeing signs of contraction in film production, we are also seeing fewer financing deals being struck, and the number of banks offering gap financing starting to dwindle.

LOOKING AHEAD

So, where is the good news? According to Shields, the leading indicators of recovery in the foreign television markets point back to the German and Japanese markets, although this recovery could take anywhere from six months to three years. In the meantime, there are still a number of opportunities that independent filmmakers can exploit.

Product placement can be used to reduce production costs, but should not be relied upon to yield a financial windfall, especially for films not expected to have wide exposure. Product sponsorship, which implies more of a financial stake in a film in exchange

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posed new cyber crime legislation that would impose penalties, including jail time, for the type of "hacking" activity that the Berman bill would permit. Given that many, if not most, of the servers utilized by online pirate operations are located outside the U.S., a purely domestic safe harbor would be of limited practical benefit.

IF YOU CAN'T BEAT 'EM, CHASE 'EM

The record industry obviously does not want to eliminate all digital downloading of music. On the contrary, it is apparent that millions of music lovers crave the ability to access music online, and the industry is now actively -- though belatedly -- moving to satisfy that demand.

A Sony Music Group/Vivendi Universal joint venture has launched "Pressplay." A Bertelsmann/EMI Records/AOL Time Warner venture has set up "MusicNet." And, Universal Music Group has licensed a major portion of its catalog (but not current hot hits) to "Emusic." Beyond these record company-controlled ventures, the major labels have granted licenses to various independent online music sites such as Listen.com and FullAudio Corp.

So far, however, these legitimate online music ventures have attracted very limited patronage. Though official numbers have not been released, researchers estimate that Pressplay and MusicNet combined have attracted only about 40,000 paid subscribers so far. Part of the problem is limited content. Redshift Research reports in the *Dallas Daily News* that MusicNet, Pressplay and Listen.com together have only 10 percent of the top 100 singles and 9 percent of the top 100 albums.

Perhaps a bigger problem is that for the most part, the subscriber sites allow downloads only in formats that contain technical constraints on copying to other digital players and CD-burning. So while a consumer can get an unrestricted MP3 file for free on a pirate site, which can then be copied onto a portable player or burned into a personal CD, the record company sites make her pay for a song that can only be listened to while sitting in front of her computer.

Part of the thinking here is that the industry does not want to enable its subscribers to use their downloads for further illegal file sharing. This concern is predicated on the industry's conviction that pirate file swapping is a major factor behind the significant decline in music sales revenue (more than 15 percent) over the last two years.

However, Forrester Research has released a report on Internet music copying that disputes this conclusion, saying that there is no evidence of decreased CD buying among frequent "free" digital music consumers. The report also concludes that if the pay services would make music available from all labels on one site, in formats that could be copied onto various digital playback devices and onto CD's, with the option to purchase individual songs in lieu of a monthly subscription fee, the entertainment industry could see Internet music distribution revenues exceed $2 billion by 2007.

> "The record industry obviously does not want to eliminate all digital downloading of music. On the contrary, it is apparent that millions of music lovers crave the ability to access music online, and the industry is now actively -- though belatedly -- moving to satisfy that demand.

The music companies are moving in this direction. Universal's Emusic will make its catalog selections available in unrestricted MP3 format. Pressplay is adding "Portable Download Packs" that allow five, ten or 20 burnable/copyable downloads for $5.95, $9.95 and $18.95, respectively.

GET LEGAL!

The question remains whether, and if so when, the record companies will be able to turn around large numbers of consumers to "get legal." A related question is whether continued and perhaps even more aggressive anti-file swapping litigation and online sabotage tactics will hasten or, perhaps, inhibit that development.

These are the overarching questions for the future of online music. As Arnold Peter discusses in his adjacent article concerning convergence, the music industry must find answers that sell not only to a judge, but to a teenager.

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article "Fight or Switch" for more on this.) In fact, streamed music is not well suited for copying, for a variety of technical and practical reasons. Others speculate that the limitless diversity of musical choices made possible by Web radio stations that require little more than a passion for music and a bit of computer equipment threatens the major labels' business model, built on generating mega-hits played endlessly by homogenized major broadcasters.

Whatever the reasons, real or imagined, for the friction between the traditional music business and Web radio, it is clear that this new medium presents another significant challenge to the recording industry as it adapts its business model to the new digital universe.

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for the product being more prominently featured, may prove challenging for independent filmmakers to accept, especially if they perceive that such measures compromise their artistic vision.

Maybe it is time to take another look at the disenfranchised individual investor. With falling interest rates and the downturn in the stock markets, investors are fleeing the established markets, and may be looking for alternative options. Of course, it is up to financial and legal advisors to help these individuals understand the additional risks they may be taking.

Until then, will the Next Big Thing please step forward…

Ben Sheppard is a director in the Financial Advisory Services - Dispute Analysis & Investigations practice group at PricewaterhouseCoopers, specializing in the entertainment industry.

SIMON SAYS...

by BILL SIMON of KORN/FERRY

What a challenging time to be involved in the entertainment/media sector. It doesn't matter if you are a senior business executive, a creative executive, an industry professional (attorney, agent, investment banker, accountant, PR executive -- even a headhunter), or the entertainment consumer confronted daily with the good and the bad in this industry: the volatile stock market, headlines (ousted CEOs, accounting scandals, etc.), accelerating technology changes, and more. This enormous ferment is, in part, a reflection of the general economy; part traces to the bursting dot-com bubble; part is the re-awakening of Wall Street realities that some thought obsolete in the "New Economy"; and a major part is the friction between new technologies and traditional business models. The real and the not real; the promises and the lies; and so much more.

Who would have predicted the fundamental changes just in the last six months in so many of the best known global entertainment/media companies (not to mention others less well known). Changes in senior management are not new -- all companies make such changes periodically, particularly when there is a significant downturn in shareholder value and general economic performance. But now, we witness the major moves at companies like Vivendi Universal with Jean Marie Messier; AOLTimeWarner with Gerald Levin and Robert Pittman; Adelphia with the Rigas family; and so many others. We see a mixture of failed business promises and what appears to be failed ethics. Boiled down, it is simply about failed leadership.

While external conditions certainly impact companies, and economic cycles change, the change taking place in many of these companies appears to me to be about a lack of leadership; a lack of communication (inside and outside the companies); a lack of clarity of the business model; and a lack of team building ability. Taken together, this means lack of leadership.

The entertainment/media sector does not seem to be much different from other more "traditional" sectors of the economy. We see similar dramatic shifts in Financial Services, Health Care/Pharmaceuticals, Manufacturing, Technology, Consumer, Retail, and so on.

It's all about RESULTS.

The severe and rapid decline in the U.S. economy over the last year, resulting in dramatic shifts in the way companies are valued, have placed CEO's and their senior management teams in the spotlight to either deliver results or get thrown own by Boards of Directors who are (finally) embracing their fiduciary responsibilities to watch out for shareholders. As such, management is being held accountable in a way never seen before. If anything, this change is seems even more dramatic in the entertainment/media sector.

Over the past several years we witnessed the dot-com bubble ever expanding, with bright/enthusiastic/creative idea/vision people creating bold new enterprises -- except it didn't work. These "big," "new" ideas weren't grounded in business fundamentals. Too many of these new media executives were trying to build and run companies without the experience, skills, or know how to do it. As we all now are painfully aware, most of these cutting edge ventures failed.

Now we are seeing a "flight to quality" -- both from the company point of view and from the individual executive point of view. Individuals are now willing to be part of a team, do their part, and apply the financial-analytical-operational disciplines, whereas two or three years ago it was about "hits" and "eyeballs". Now the companies are looking for executives who possess both the traditional business disciplines AND the entrepreneurial capabilities to work in a highly competitive marketplace.

It's also interesting to see how "broken" some of these companies and industry sectors appear to be -- like AOLTimeWarner, Adelphia, VivendiUniversal, along with most of the music industry which is facing what I believe to be a fundamentally broken economic model.

How will these companies and sectors survive and re-establish their leadership positions with consumers? I believe that it will be achieved via LEADERSHIP. This will START with leadership at the top, then filtering throughout the organizations. It will require a thoughtful, rational, strategic re-examination of the business; attracting and retaining the best people; communicating, internally and externally, the enterprise's strategy, tactics and expectations for the marketplace to understand; and reacting rapidly, flexibly and constructively to what the marketplace says is working and what isn't.

Further, by attracting and retaining the best executives, such companies should be able to disseminate authority and responsibility deeper into the organization so that executives can be held accountable for results. Building better teams within the organization will facilitate better/faster progress toward company objectives.

However, this is not easy to do. It requires the commitment of senior management and resources (i.e. money) to be focus on training and development. During tough economic times such as these, we usually see the first thing to disappear is such training and development for employees.

We often hear senior executives say, "these employees are lucky to have a job right now...." That may or may not be true; but when the economy comes back, which history shows that it will, companies will no longer enjoy the loyalty of those employees who were treated badly through the downturns; they will have multiple opportunities to go elsewhere.

While so many companies are focused on survival, and it is an especially difficult time for so many companies in the entertainment and media space, it is a mistake to take your colleagues and employees and clients for granted. Cement those relationships through shared common problem solving; be open and communicative; set realistic expectations; define and articulate the plans and strategy for the company. If you can work through the tough times -- and it is as difficult as many of us have seen in the last 20 years -- you will share successes with those around you when the marketplace turns.

Please also see Bill's Hot Search - page 8

EXECUTIVE PROFILE: CHUCK DAVIS, CEO, BizRate.com

Each issue of *Insights* will introduce our readers to an "impact" player in today's entertainment/media/technology environment. In this, our debut edition, we profile Chuck Davis, CEO of BizRate.com.

INSIGHTS: Chuck, give us a snapshot of BizRate.com.
CHUCK: BizRate.com is the #1 comparison shopping site on the Web and a leading e-commerce research firm.

INSIGHTS: What's your education?
CHUCK: MBA from Harvard Business School; BA in Urban Studies from Brown University.

INSIGHTS: What was your first job in the new media space?
CHUCK: In January 1996, I joined Disney Online as senior vice president of marketing, overseeing subscriptions, advertising, marketing and shopping. A few years later, I became president of e-commerce for The Walt Disney Company Internet Group, managing 10 product groups, including the offline Disney Catalog.

INSIGHTS: What business leader do you admire most?
CHUCK: Peter Rozelle, who was the NFL Commissioner for over 30 years. He turned a fledgling sport into a major hit. Before 1960, the year Rozelle took over, the NFL was entirely dependent on fans buying tickets to games. Now 40 years later, fans account for 25% of the revenues and television fees account for the overwhelming majority (75%) of football revenues.

INSIGHTS: What's the best business advice you ever received?
CHUCK: Treat everyone with respect -- superiors, subordinates, equals, parents, grandparents, teachers, babysitters.

INSIGHTS: What is the best business advice you give today?
CHUCK: What goes around comes around…which is why it's important to treat everyone with respect. Treat your business career like a marathon, not a sprint.

INSIGHTS: How has your consumer and direct marketing background supported your career in the e-commerce world?
CHUCK: The Web is the ultimate direct marketing channel due to its interactivity. So my direct marketing background is a natural fit. E-commerce may be technology based, but no matter whether you sell products and services via the phone, catalog or Internet, it is the consumer who counts. My consumer marketing background keeps me focused on what's important.

INSIGHTS: What's your take on convergence - dead or alive?
CHUCK: In e-commerce, convergence is alive and well. Brick-and-mortar, catalog and pure-plays are converging in different ways to serve the new type of shopper: the "multi-channel" shopper.

INSIGHTS: What do you see as the hottest trends for Internet and e-commerce businesses?
CHUCK: The acceleration of e-commerce is the hottest trend. Its resiliency even in a down economy tells me consumers love buying online. Comparison shopping is also a key growth area. Where else can one find 24/7 shopping with perfect information (product pricing; merchant and product quality ratings)?

Q&A

Chuck Davis

INSIGHTS: What are the key elements to becoming a successful dot-com business?
CHUCK: Direct marketing acumen; a business model with a value-added consumer proposition; taking a long-term view, and losing the 'get rich quick' mindset. Build great teams -- individuals don't win championships.

INSIGHTS: What is the most common mistake made today in e-commerce?
CHUCK: Erecting a cool looking web site, but not perfecting the vital backend pick-and-pack side of the business. Hype versus real results.

INSIGHTS: How important are online community-building and customer loyalty to your particular business?
CHUCK: Very important. BizRate has built the largest online customer feedback system in B2C ecommerce. It is what makes our ratings and reviews so unique, and why consumers are loyal to us. Community is what is lacking in many other channels.

INSIGHTS: What should major entertainment and media companies be doing to better capitalize on the Internet as a growth driver for their business?
CHUCK: Partnering with the right ecommerce companies, who can help them gain incremental revenue streams to complement their core businesses.

INSIGHTS: How do you attract buyer traffic to the site, and how expensive is it to do that?
CHUCK: We use various online marketing techniques to attract traffic. It always delivers on your ROI since it's at the core direct marketing. It's also more targeted and more measurable than offline advertising.

INSIGHTS: How do you attract sellers to the site; and what qualifies a seller to participate?
CHUCK: Sellers come to BizRate because we provide a cost effective method of customer acquisition, and it costs nothing to initially join our marketplace.

INSIGHTS: How do you monetize the buyer and seller traffic?
CHUCK: We charge our sellers on a CPC (cost-per-click) for the traffic we send to them. In some cases we get a percentage of the sale when a consumer buys merchandise at a seller's site. We have millions of shoppers visit our site each month to shop for millions of products among our 2,000+ retailers.

INSIGHTS: What distinguishes BizRate from its e-commerce competitors?
CHUCK: BizRate is to shopping what Google is to search. Nearly 9 million consumers visit BizRate a month to shop, so it only makes sense for merchants to tap into this buyer-hungry audience.

Bill's Hot Search

Bill Simon offers the inside scoop on his hottest executive placement search assignment this month...

The National Association of Recording Arts and Sciences (the head of the Grammy Organization), which is based in LA, oversees the 35+year-old Grammy's; the award show on CBS; and the new Latin Grammy's. They also oversee Grammy in the Schools, the Grammy Foundation and Music Cares. NARAS have approximately 20,000 members from all aspects of the music industry with about 12 chapters nationally. It's a great gig!

Be sure to check out Bill's Hot Search in each issue of ***Insights***.

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Insights is published six times annually. If you would like to be added to the email distribution of this newsletter or removed from the mailing list, please contact Michelle Pisciotti at 312-443-0505 or mpisciotti@lordbissell.com.

Roll the Credits...

Introducing Insights' Editorial Board

Insights is a collaborative effort among professionals at Lord, Bissell & Brook, PricewaterhouseCoopers and Korn/Ferry. Editorial Board members include Deborah Bothun, C. Dennis Loomis (Editor-In-Chief), Arnold Peter, Bill Simon, and Peter Winkler.

Deborah K. Bothun is a partner in PricewaterhouseCoopers' Financial Advisory Service practice, focusing on commercial litigation involving entertainment and other intellectual property matters, and the identification and analysis of economic damages. Deborah also provides financial consulting expertise on motion picture financing, business interruption insurance claim preparation and financing reorganization matters. Clients include major entertainment conglomerates, motion picture studios, financial institutions, insurance companies and other entertainment industry stakeholders.

C. Dennis Loomis is a partner in Lord, Bissell & Brook's Intellectual Property Group, focusing on sophisticated litigation and strategic counseling involving copyright, trademark, unfair competition, privacy/publicity, E-commerce and related commercial matters. Over a twenty four year legal career, Dennis has represented a diverse array of clients including major motion picture studios as well as the MPA, Fortune 100 consumer products companies, sports enterprises and creative professionals.

Arnold Peter is a partner at Lord, Bissell & Brook and Chair of the firm's Entertainment and Media Practice. As the former Vice President of Legal and Business Affairs for Universal Studios, Arnold has direct entertainment industry expertise in a variety of areas. He currently represents clients in traditional entertainment and media, along with sports, Internet and hospitality.

Bill Simon is the Managing Director of the Global Entertainment and Media Practice for Korn/Ferry International, the industry's leading executive search firm. Bill oversees senior management searches world wide for companies across all entertainment sectors, including theatrical, television, music, home entertainment, location based entertainment and sports. Clients range from major entertainment conglomerates to smaller independents, and searches cover the full range of positions -- the business side (e.g., CEO, CFO, COO), creative positions (president of programming, production, development) and everything in between (head of business affairs, marketing, sales, distribution, etc.).

Peter Winkler is Managing Director of Global Marketing for PricewaterhouseCoopers' Entertainment & Media Practice. He oversees editorial, marketing and sales of PricewaterhouseCoopers' Global Entertainment & Media Outlook, the industry's leading five-year international market forecast. Peter has more than 12 years of entertainment and media marketing experience; has authored numerous white papers and articles; and has been quoted as an expert analyst source in industry news stories by *CNBC*, *CNNfn*, *USA Today*, *Variety* and *The Hollywood Reporter*, among others.

Clockwise from top: C. Dennis Loomis, Arnold Peter, Deborah K. Bothun, Peter Winkler, and Bill Simon.

NEWS NOTES

In a case handled by Lord, Bissell & Brook partner Jeff Kravitz, the federal Ninth Circuit Court of Appeal has just reversed summary judgment entered by the trial court in a trademark infringement case against LBB client Trek Bicycle Corp. The case turns on the question whether the adverse party's use of the mark "OrbiTrek" on an elliptical glider stationary exerciser infringes Trek's mark "TREK," made famous primarily on its top-rated road bikes but also used, though briefly, on indoor stationary cycles and a wide array of other fitness merchandise. The trial court, ignoring evidence that 25 percent of consumers surveyed found the OrbiTrek mark confusingly similar to TREK, ruled that there was no infringement as a matter of law. The appellate court reversed, holding that because the survey showed at least some actual confusion between the marks, Trek is entitled to a full trial to satisfy the legal test for trademark infringement, namely a likelihood of confusion. Lord, Bissell & Brook attorneys Hugh Balsam and Hugh Griffin wrote the brief.

Lord, Bissell & Brook attorneys Arnold Peter and Kristine Lefebvre recently negotiated and drafted the agreement for the Asian Pacific Economic Conference to be held in Cabo San Lucas, Mexico in October. This is a major economic summit hosted by Mexican President Vincente Fox and will be attended by 21 heads of state including George W. Bush.