media & entertainment

INSIGHTS

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THE LATEST NEWS IN MEDIA, ENTERTAINMENT & TECHNOLOGY LAW & BUSINESS

EDITOR'S CORNER

We are pleased to introduce our new Editor-In-Chief, Neil H. Dickson, a leading entertainment attorney in Lord, Bissell & Brook LLPís Atlanta office.

In this issue of ***INSIGHTS***, we focus on the effect product placement and integration is having on the video gaming and television programming industries. Top entertainment executives, such as Edelmanís Ferris Thompson and Nielsen Interactive Entertainmentís Michael Dowling offer their outlook on the altering markets and consumer trends.

Donít miss the European Media Leaders Summit 2004 in London, or NATPEís 2005 Conference & Exhibition in Las Vegas. We canít wait to see you there!

HEADLINES

YOU GOT GAME? How In-Game Product Integration Can Reach Elusive 18- To 34-Year-Old Males

by MICHAEL DOWLING of NIELSEN INTERACTIVE ENTERTAINMENT

As today's fastest-growing entertainment business, the video game industry has dramatically increased its reach among a demographic highly valued by advertisers: young males. At the same time, with more and more young males gravitating toward video games, and often playing them for hours at a sitting, many in the advertising community have begun to explore the effect this may be having on usage of more traditional media, particularly television. Our sister company, Nielsen Media Research, reported last fall that 18- to 34-year-old men are watching less television compared to similar past measurement periods. This announcement provoked heated debate, which is not surprising considering that a few percentage points can mean millions of dollars lost or gained in media spend.

We do not believe that television has lost its appeal to America's young males. However, the broadcast networks do have cause for concern as the youth generation in this country has a very different relationship with media and technology and, as a result, consumes media much differently than prior generations. As the first generation to grow up digitally, their media consumption habits have fundamentally shifted. Their experience with media is far less passive, so when they do watch television, it is more than likely accompanied by music from their MP3 player, instant messaging with friends, and homework. What's more, they demand more choice in and control over the content they consume. They have an insatiable appetite for a wide breadth of entertainment and want to consume content whenever, wherever and however they choose. Not to mention, they can pilot a keyboard, maneuver a

joystick or navigate the worldwide Web as naturally as we operate a pencil.

These shifting consumer habits are becoming the norm, not the exception. And, given the influence of the youth in this country, this dynamic should not be taken lightly. Not since the first Baby Boomers came of age nearly half a century ago, have there been so many adolescents in this country. In fact, the children of Baby Boomers now comprise the largest teenage population in U.S. history. Moreover, they wield enormous economic clout. With aggregate purchasing power of more than $200 billion, they spend nearly 22 percent of their disposable income on entertainment.

It's not surprising then that the video game industry is such a rapidly growing entertainment business in the U.S., generating $7 billion in software sales in 2003 and growing at a 12 percent compound annual growth rate since 1995.

We have seen the introduction and acceptance of multiple media into the home during the

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Madison Meets Vine: How Product Placement, Integration And Sponsored Programming Is Evolving And Changing The Way Marketers Reach Consumers

by ARNOLD PETER of LORD, BISSELL & BROOK LLP and FERRIS THOMPSON of EDELMAN

Historically, 30- and 60-second commercials have paid for television programming. Television has operated on this largely unchanged business model since the so-called "Golden Age" of television. Today, production integration, placement, and sponsored programming are the rage. This is the intersection of Madison and Vine. Madison refers to the world of advertising and marketing, headquartered on Madison Avenue in New York; and Vine is the street identified with the world of entertainment content and programming in Hollywood. We tap into the mind of one of Hollywood's leading experts in this area, Ferris Thompson, to find out what's right and wrong about the trend, and where it's all headed.

Ferris Thompson leads the entertainment marketing practice at Edelman, the world's largest independent public relations firm. Ferris, a 20-year entertainment veteran, is based in Edelman's Los Angeles office and is the company's first senior executive dedicated solely to the practice of entertainment. The principal focus of the entertainment practice is to blend entertainment marketing with public relations to create powerful and relevant messaging, strong brand allegiance and grow product sales or corporate reputation.

Thompson joined Edelman in April 2004 from United Talent Agency, where he managed the firm's marketing department. UTA is one of the world's largest talent agencies and Thompson was instrumental in connecting the agency's TV, film, and music clients with major brands. Prior to UTA, he was Vice President of Corporate Marketing and Strategic Alliances at Universal Studios.

INSIGHTS: What is your overall philosophy about product placement, product integration and sponsored programming?

Before we get into the philosophy of product placement and integration, I think it's important to recognize that this type of marketing seems to be receiving a disproportionate amount of media relative to how effectively and frequently it can be applied. Yes, consumers aren't paying attention to commercials as much as they used to, but this trend has been happening for years. Is there more product integration going on today, or is there just more press about the integration that is happening? It's hard to say because no one really tracks overall product placement activity year over year. Steven Spielberg not only integrated Reese's Pieces into ET more than 20 years ago, he also built promotions around the partnership. Texaco "sponsored" primetime entertainment at the dawn of television as we know it. How different are these examples from Pepsi in "Austin Powers" and Toyota presenting "Father of the Pride" commercial free on NBC? The answer is it's not.

And as it is with the world of entertainment, the best form of product integration is all about the story and the role a brand plays in telling that story. It's no longer enough to be a prop on the set. To break through and connect with the consumer, brands need to find ways to be a part of the story. And this presents the real challenge. Is the integration natural and organic? Or is it a forced fit? Consumers are more sophisticated than ever. If they feel they're being overtly sold, this type of marketing will backfire.

Product integration should also be a part of an overall strategic approach to building a brand, not a tactic for the tactic's sake. Placement may get a brand its

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An **Upbeat Outlook** For Entertainment And Media Companies

by PETER WINKLER of PRICEWATERHOUSECOOPERS

After three years of cost cutting, sluggish growth and disappointing share prices, the entertainment and media industry is once again poised for solid growth. That was the prevailing sentiment on June 29, when top industry executives gathered in New York City for PricewaterhouseCoopers' conference, "Outlook for the Entertainment & Media Industry: 2004-2008."

The morning-long conference, which attracted more than 150 executives, included two panel discussions featuring media industry experts and a summary presentation of the newest edition of PricewaterhouseCoopers' *Global Entertainment and Media Outlook: 2004-2008*. The 550-page *Outlook* forecasts that the industry's global revenues will jump from $1.2 trillion in 2003 to nearly 1.7 trillion in 2008, a 6.3 percent compound annual growth rate (CAGR).

"Our forecasts show that the entertainment and media industry has begun a solid upturn," explained Wayne Jackson, the newly appointed Global Leader of PricewaterhouseCoopers' Entertainment & Media Practice. Jackson assumed his new role following the retirement of Kevin Carton, a well-known industry figure who helped establish PricewaterhouseCoopers as a leading professional services firm in the entertainment and media sector. Jackson, who brings more than 25 years of financial and operating experience in the media, broadcast, cable, and telecommunications industries to his new post, now oversees PricewaterhouseCoopers' assurance, tax and advisory work for the entertainment and media industry. He also acts as the group's spokesman and spearheads its business development, marketing, communications and knowledge management efforts.

In a presentation of key *Outlook* findings, Jackson explained that the industry could expect to see a healthy 5.7 percent bounce in revenues in 2004 and that growth rates would continue to improve, hitting 6 percent in 2005 and 7.2 percent in 2006. PricewaterhouseCoopers' analysts based their relatively bullish prognosis on a strengthening global economy; the rapid development of new distribution channels such as broadband Internet access; next generation technologies that will boost revenues in more mature sectors; and booming markets in the Asia-Pacific region, an area that will see revenues skyrocket from $229 billion in 2003 to $366 billion by 2008, a 9.8 percent CAGR.

While Asia-Pacific easily ranked as the fastest-growing region, Jackson stressed that the entertainment and media industry will see healthy expansion in all major regions. The U.S., the largest and most mature market, will see revenues climb from $523 billion in 2003 to $680 billion in 2008, a 5.4 percent CAGR, while Europe, the Middle East and Africa will grow from $420 billion to $549 billion, a 5.5 percent CAGR. Latin America's prospects will also improve as revenues bounce from $33 billion in 2003 to $45 billion in 2008, a 6.5 percent CAGR, and Canada will expand from $24 billion to $31 billion, a 6.4 percent CAGR.

Jackson cautioned, however, that the industry faces some serious challenges that will restrict growth. Higher spending on defense and domestic security and higher energy prices means "that there will be fewer resources available for entertainment and media products," Jackson argued. Newer technologies will continue to encourage piracy, an issue that has already wreaked havoc on the music sector.

Growth opportunities will also vary widely from industry segment to segment. The fastest-growing segment will be video games, which will explode from $22 billion in 2003 to $56 billion in 2008, a 20.1 percent CAGR, followed by Internet advertising and access, which will more than double from $103 billion to $224 billion, a 16.8 CAGR. The forecast calls for hefty revenue increases for filmed entertainment, which will see spending climb from $75 billion to $108 billion, a 7.5 percent CAGR, and for the TV distribution (station, cable and satellite) segment, which will expand from $129 billion to $183 billion, a 7.1 percent CAGR, during the five-year survey period.

Several other more traditional media segments will, however, see sluggish growth. As Internet advertising takes market share away from the print media, newspapers will post a modest 2.6 percent CAGR and magazines will grow at a 3 percent CAGR.

While the Internet has posed major piracy problems for the music industry in recent years, recorded music is poised for a modest recovery after several years of declining revenues. Thanks to legal

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past two decades (e.g. digital cable, DBS, video game consoles, DVRs, etc.) at seemingly faster and faster penetration rates. The resulting fragmented media landscape has challenged marketers and media planners to reach valuable consumer segments, which has opened opportunities for alternative media types. Since all are vying for a place in a media planner's decision-making process, they are all fighting to compare themselves to television. The burden on broadcast television to defend itself against these emerging media types is intense. As television is where the bulk of media spend occurs, any emerging medium, to be successful, needs to show how it can more efficiently deliver key target demographic segments.

As a medium, video games are rivaling the imagination of movies, the ubiquity of television and the immediacy of the Internet. The latest generation of video games is graphically realistic and visually alluring, with the added excitement of welcoming the gamer into the adventure by allowing him to control the action. So, it's not surprising then, that video games and the Internet are a big part of the youth generation's leisure activities. According to our research, three-quarters of Nielsen television households with a male member between the ages of eight and 34 own a video game system. Active gameplay occurs throughout multiple life stages, with nearly 40 percent of male gamers over the age of 17. Evolving storylines, deeper characterizations and more sophisticated gameplay experiences are clearly keeping gamers playing into their 20's and 30's. The average male gamer plays video games about five times a week, and spends at least 30 minutes every time they sit down to play.

We also found that gamers spend quite a bit of time playing video games during the week during key television viewing dayparts. In fact, males aged 18 to 34 spend an average of 5.1 hours per week playing video games after 8 pm. More remarkable, we observed from our television ratings data that older video game players appear to be watching less TV across key dayparts compared to the average 18- to 34-year-old. Additionally, when we looked back over five years (2000-2004), we found that the share of television usage of a video game system during primetime viewing hours for males 18 to 34 increased at a 26 percent compound annual growth rate from 2.6 percent to 6.5 percent. In other words, of all television sets turned on during primetime, so far in 2004, 6.5 percent of those televisions are being used for video game play—and this doesn't even include usage of a PC for video games.

So, is television viewing truly eroding as a result of video game usage? It's too early to tell, but the importance of gaming in the lives of young men is noteworthy and shouldn't be ignored by those that want to effectively reach them.

Our research indicates that advertising/product integration within video games is already beginning to have a significant impact. A solid proportion of gamers are consciously aware of advertising in the games they play (27 percent), which is noteworthy as advertising/product integration is at a relatively immature stage in its evolution. Not only are they showing recall, but they also have positive perceptions of these advertisements in terms of recall, perceived realism of the games and beneficial impact in deciding which products to buy—with 43 percent actually preferring when real products are integrated into the game and over half (55 percent) agreeing that it makes the game play more genuine.

"The average male gamer plays video games about five times a week, and spends at least 30 minutes every time they sit down to play.

The increasing popularity of video game play, as evidenced by household penetration trends and frequency levels of game play, has escalated concerns about decreased TV viewership among young males between the ages of eight and 34. Initial studies suggest that some of these concerns may be valid, as older male gamers aged 18 to 34 appear to be watching slightly less TV than would be expected given their representation in the population. And, they are playing video games for longer periods of time, especially during key television viewing dayparts. While the decrease in TV viewing is slight, the more striking trend is the increasing usage levels of video game play. While media planners work through all the various challenges of reaching key target demographics, one trend that should continue to be monitored is the evolution of in-game product integration.

Michael Dowling is the General Manager for Nielsen Interactive Entertainment.

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"15 minutes of fame" but in the end that will be hard to sustain unless it's an integrated piece of a larger strategic communications campaign.

INSIGHTS: What, in your opinion, are currently the best and worst examples?

That depends on your point of view. Each stakeholder from the network to the advertiser has a different need or interest. Ultimately it's the consumer who should decide the best or the worst, but again there doesn't seem to be a viable system of measurement in the marketplace to gauge success or failure right now.

INSIGHTS: What is the basic economic formula? Should brand owners be prepared to pay more than they would for standard spot advertising?

There is no "formula" per se as there are a wide range of variables that need to be taken into consideration. It depends entirely on the show, the quality of integration, the size of the audience, the advertising support, and the associated marketing activities that a brand may bring to the table.

INSIGHTS: Is there resistance from programmers and creators? How is the resistance overcome?

Mark Burnett, considered by some to be the top TV producer in Hollywood and someone who is also having great success with product integration, recently remarked, "I work on getting the show right first, then if there's an opportunity to integrate brands we explore those options."

Again there is a wide range of ways to craft these deals. Cash helps. A lot. But if it doesn't fit into the story, no amount of cash will get the deal done.

INSIGHTS: There are always issues of creative and business control between network and cable executives on the one hand and producers on the other. Are the issues any different here and ultimately, who should have final approval?

Brands need to trust the story tellers but have safeguards to protect their interests and commitments.

"Steven Spielberg not only integrated Reeseís Pieces into ET more than 20 years ago, he also built promotions around the partnership.

INSIGHTS: Is there a class or category of brands for which integration will not work or is any brand capable of being integrated into the right type of programming?

Yes, certain categories might never find their way into programming. But it's not as much about the category as it is about the degree of difficulty of finding the natural way to make a brand a part of the story. Is it easier to work with cars than with household cleaning products? Sure, but who's to say that the right story integration isn't out there for Pledge.

INSIGHTS: What is a higher risk proposition for brand owners, traditional advertising or product placement and sponsorships?

In advertising the advertiser has all the control over the content, the message and/or the offer. Then again it's a commercial and TIVO is on the way. With product placement there is much less control but the delivery can be significantly more authentic as it's not a sales pitch. Both forms of marketing bring their own inherent risks.

INSIGHTS: Final question. How do you see this trend playing out in the next five years?

What's that phrase from Jerry McGuire…."show me the money!" In the last six months alone we have seen a series of record-breaking deals from "The Apprentice" to "The Contender" and "Oprah." That trend looks like it's escalating. Beyond that it's going to get more integrated, more sophisticated and more measured. And it will be as important as ever to partner with experts who know the marketplace and the most strategic and effective way to integrate brands into pop culture.

Arnold Peter, Chair of Lord, Bissell & Brook LLPís Entertainment & Media Practice, represents a variety of clients in the entertainment, new media and hospitality industries in all phases of their business operations.

Ferris Thompson is the President of Edelmanís Entertainment Marketing Practice, based in Los Angeles, California. Ferris is the company's first senior executive dedicated solely to the practice of entertainment.

NEWS NOTES

- Lord, Bissell & Brook's Jeffrey S. Kravitz is representing Denice Halicki in *Halicki v. Carroll Shelby International, Inc.* Ms. Halicki filed suit against Carroll Shelby International, Inc. for copyright infringement and trademark infringement of her rights to the film "Gone in 60 Seconds" and its feature character, a 1971 Fastback Ford Mustang named Eleanor. Plaintiff alleges that, without right or license, defendants have been manufacturing, marketing and selling three motor vehicle versions of Eleanor as featured in "Gone in 60 Seconds," ranging in price from $90,000 to $150,000.

  As alleged in the complaint, Denice Halicki is the widow of deceased movie and performance car personality H.B. "Toby" Halicki (Halicki). In 1974, Halicki wrote, produced, acted in, financed, directed and marketed the original film "Gone in 60 Seconds," which starred a 1971 Fastback Mustang customized by Halicki to play Eleanor, a 1973 Mach 1 Ford Mustang. Eleanor is a key part of the plot and is featured in a 40-minute chase scene widely praised by movie critics. An international box office success, "Gone in 60 Seconds" spawned "The Junkman" and "Deadline Auto Theft," which also feature Eleanor.

  Per the complaint, Halicki was killed on August 20, 1989 during a stunt sequence while filming "Gone in 60 Seconds 2," which was to feature Eleanor. In 1994, Ms. Halicki obtained all rights, title and interest in the film "Gone in 60 Seconds" and to Eleanor. In 1995, she contracted to remake "Gone in 60 Seconds" and specifically retained her rights to the character Eleanor and received an executive producer credit. In 2000, Touchstone Pictures released the remake of "Gone in 60 Seconds" starring Nicholas Cage, Angelina Jolie and Eleanor. Also in 2000, Ms. Halicki released the original "Gone in 60 Seconds" film and its sequels on DVD and VHS through her film and entertainment company, Halicki Films.

- "Screenwriters Allowed To Pursue Breach Of Contract Claims For Idea Theft," an article co-authored by Lord, Bissell & Brook's Robyn Aronson, Jeffrey Kravitz and Jody Simon, covers the recent ruling in *Grosso v. Miramax Film Corp., et al.*, 2004 U.S.App. LEXIS 18909. The Ninth Circuit of the U.S. Court of Appeals ruled that a state law breach of contract claim could be pursued by a screenwriter who alleged that Miramax stole the basic ideas of his screenplay, *The Shell Game*, and incorporated those ideas into the movie *Rounders*. To read the complete article, please visit www.lordbissell.com.

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actions against pirates, modification of the CD sales model and the growing popularity of legal digital downloads, recorded music will see revenue increase by a slight two percent CAGR, according to PricewaterhouseCoopers' analysis.

A buoyant ad climate and newer technologies, such as satellite radio and better measurement techniques, will help radio and out-of-home advertising grow by a 5.1 percent CAGR between 2003 and 2008. "Next generation technologies—digital TV and radio, DVDs and online and wireless video games—will reinvigorate [a number of] maturing segments of the industry," Jackson noted.

In addition to Jackson's "Outlook" presentation, the PricewaterhouseCoopers conference featured two high-level executive panel discussions. The first panel, "The Future of Entertainment & Media—Industry Analysts' Perspective," featured David Lieberman, Senior Media Reporter, USA Today (panel moderator); John Brand, Senior Analyst, META Group; Wayne Jackson of PricewaterhouseCoopers; Eliot Merrill, Principal, The Carlyle Group; and John Tinker, Managing Director, ThinkEquity. The second panel, "Current Realities—Key Operating, Financial and Business Issues Facing Senior Industry Executives," included James O'Shaughnessy, U.S. Entertainment & Media Leader, PricewaterhouseCoopers (panel moderator); Michael Connors, Chairman and CEO - Media Measurement and Information Group, VNU; Christ Economos, Entertainment & Media Partner, PricewaterhouseCoopers; Scott Marden, President - Information and Media Services, McGraw-Hill; and Mark Rosenthal, President and COO, MTV Networks.

The complete 550-page *Global Entertainment and Media Outlook: 2004-2008*, which analyzes and forecasts future revenues for 14 industry segments across five regions of the world, sells for $995. A 50-page *Global Overview*, which provides a top-level summary of the report's conclusions, can be purchased for $95. Both options are available in either print or PDF formats. PDF versions of individual chapters on specific industries can also be purchased for $95. To find out more or to place an order, go to www.pwc.com/outook or call 1.800.654.3387.

Peter Winkler is the Managing Director of Global Marketing for PricewaterhouseCoopersí Entertainment and Media Practice.

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Lord, Bissell & Brook and PricewaterhouseCoopers are featured sponsors of the NATPE 2005 Conference. Our two firms will co-host the NATPE Board and Executive Committee Dinner on January 24. On January 25, we will lead a conference session track featuring two key panel discussions: one on "The Road Ahead for the Cable Industry," and another on "Where TV Programming Meets the Bottom Line." Also on January 25, we will host a VIP (by-invitation-only) luncheon session with an interactive panel discussion on "Media Measurement: The Latest Trends and Debates."

Also at NATPE, PricewaterhouseCoopers will release its new white paper focusing on the topic "Where is the Cable Industry Placing Big Bets for Future Revenue Growth?"

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Robert Boyle, European Leader, Entertainment and Media Practice, PricewaterhouseCoopers

Introducing

Neil H. Dickson

Editor-In-Chief, *INSIGHTS*

In this issue of *Insights*, we welcome Neil Dickson as our new Editor-In-Chief. Neil is a top entertainment attorney with a focus on the television and radio industry and is a partner in the Atlanta office of Lord, Bissell & Brook LLP. Prior to joining Lord, Bissell & Brook, Neil was Chief Operating Officer and General Counsel of the CTN Media Group, Inc, which owned College Television Network (now part of Viacom). Neil's complete biography is available on Lord, Bissell & Brook's Web site: www.lordbissell.com. We asked Neil to share his thoughts on the future of the television and radio business.

***INSIGHTS*:** You represent many TV station owners. What is the primary challenge your clients are facing today?

DICKSON: Local television ownership is a very tough business. There are numerous challenges facing station operators today, such as viewership erosion due to increasing choices, finding alternative revenue sources, increased competition and alternatives for advertisers, on demand television and many more. However, one issue that seems to be really bothering station owners at this point in time (which relates to decency issues) is the uneven playing field when it comes to content. Local network affiliate television station owners cannot broadcast shows like "Soprano's," "Nip/Tuck," "Jackass," etc., even though these programs may be 20 channels apart on the cable system. There appears to be two sets of rules and the station operators are getting the short end of the stick.

***INSIGHTS*:** What is the biggest challenge you have faced in this role?

DICKSON: In business development, the biggest challenge is monetizing new opportunities that may be revolutionary in its approach into existing business models. For content protection, staying ahead of the pirates is a never-ending battle.

***INSIGHTS*:** What has the impact of "media consolidation" been on your clients?

DICKSON: Consolidation is a natural step in most industries. It has had a dramatic impact in radio, helping to increase profitability through economies of scale. In television, there are simply less players. The day of a family owned television station is almost gone, with only a few remaining. On the network side, there has actually been an increase in the number of different content providers. This is due to an increasing number of distribution outlets.

***INSIGHTS*:** Is the role of attorneys different when working with entertainment clients?

DICKSON: Not sure it really is different for me. However, client expectations of attorneys have certainly changed. These days, clients not only expect great legal work but they look to their attorneys to also be strategic business advisors. They expect attorneys to help them build and grow the business. In my opinion, this is what distinguishes a great lawyer from a good one.

***INSIGHTS*:** The advertising model for television content is moving to things like product placement and sponsored programming. Is this good for the business of television?

DICKSON: Absolutely. This provides an excellent revenue source for the content providers. It also counteracts the erosion due to on demand television which extracts commercials. Radio needs to become more creative and use this model, since it is facing the challenges of satellite radio. Programmers just have to be cautious that the integrity of the content is not compromised. Overall, it is a good thing for the business.

Bill's Hot Search

Bill Simon offers the inside scoop on this month's hottest executive placement search...

Turner Broadcasting Systems, Inc. is in search of a Vice President of Strategic Marketing. The VP will be responsible for developing marketing strategies and implementing marketing plans that support the long-term and short-term success of the CNN News Group.