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Intellectual Capital Management in the Creative Industries:

From intellectual creations to intellectual property

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Abstract

Investments in the CIs have not reached a satisfying level. As funding is the answer to keeping SMEs proliferating in this cost-intensive sector, and the starting costs are high with these kinds of productions, the creators need to package and communicate their ideas at an early stage. Entrepreneurs often have trouble understanding how to package intellectual assets into property constructions, whereas investors on the other hand find it hard to fathom the potential for value, which lies vested with intangibles. The premise of this thesis is that the lack of understanding emanates from a failure to communicate. We propose that the industry needs tools enabling better communication between the creators and the investors. Creativity itself, is not an issue, there are plenty of creative persons out there. Instead, what becomes problematic is the step from merely expressing creativity to create a commercial product.

In this thesis we apply the models of intellectual value mapping and the Intellectual Value Star to the specific setting of the Creative Industries. In addition we gather empiric data to corroborate our findings and also to provide a specific case study to provide validation of our premise and analysis.

The contribution of this thesis is to further the understanding of how strategic use of intellectual property rights is valuable for the sustainability of ventures in the creative industries. We demonstrate the connection between the intellectual value concept and the commercial success of ideas in the creative industries and how awareness of this connection is necessary on every level in the industries. Actors incorporating this perspective and applying the conclusions of this thesis to their reality will hopefully be able to create the structures and value-creating mechanisms that will allow the creative industries to prosper in the intellectualized economy.

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I. INTRODUCTION

The first chapter introduces the topic and the relevance of examining this subject, as well as the future practical application of our study. We present the question statement, the scope of the thesis and introduce the most relevant delimitations.

I.1 Background

As society continues to undergo the transition towards an intellectualized economy,¹ the creative industry (CI) sector is, thus far failing to achieve its full potential. Despite the high growth rate of the industry, investment capital remains difficult to attract.² Old-fashioned business models cannot keep up with the challenges brought on by the digital era, mainly in terms of securing profit. The most valuable assets in this sector are intellectual, assets intangible in their essence. As the nature of these intellectual assets conveys new challenges in terms of determining value and potential for profit, it is crucial for entrepreneurs in this industry to get an understanding of how to package intellectual assets as well as of how to effectively communicate value to capital providers and potential partners in order to create opportunities and mitigate risks.

I.2 Questions at issue

The topic of this masters' thesis concerns the management of intellectual assets (IA), and the tools and processes needed to facilitate packaging and commercializing ideas in the CIs. There are several reasons for why the CIs need augmented knowledge in the area of intellectual property (IP): the rise of the intellectualized economy has conveyed several challenges to which the CI's need to react. Some consider illegal file sharing the greatest threat to the CIs, and strong measures³ to stifle these activities have been taken. Other aspects of analysis concern the level of knowledge among individual actors regarding their rights and how they can manage IP to their advantage, difficulties communicating the value of companies' business profiles to banks, investors or government bodies as well as how to develop intellectual assets in order to raise investments and achieve sustainable value creation. It is significant to raise awareness regarding the tools and processes behind leveraging intellectual creations, as improved skills regarding IP can benefit the industry in general, the Nordic region, as well as the independent entrepreneur.

I.3 Question statement

This leads us to the following identified question we will examine in this thesis:

¹ Different terms are used to describe the same phenomenon: "information age" according to Max H. Boisot in Knowledge Assets 1999, "knowledge based economy" among economists: Eliasson Gunnar (1999) "Making Intangibles Visible – the value, the efficiency and the economic consequences of knowledge". Stockholm. Ulf Petrusson argues that the focus should instead be on *the control* of the knowledge and information and he therefore use the term "the intellectualized economy", p. 1 footnote 3.

² Many interviewees mean that the actors lack knowledge essential to take advantage of what the intellectualized economy entails.

³ In November 2005, Sollentuna District Court imposed a fine of 17600 SEK for the illegal uploading of the Swedish movie "Den tredje vågen". This verdict may however be subject to retrial in the appellate courts and potentially altered. The maximum penalty for breach of the Swedish Copyright Act is 2 years imprisonment plus damages.

How can entrepreneurs in the CIs manage intellectual assets to create opportunities and mitigate risk, and thereby create sustainable value?

By answering this question, we can understand how actors in the CIs can address some of the challenges they face in the intellectualized economy by developing capabilities in managing intellectual assets. We will be able to identify success factors critical to business ventures in the CIs relating to IP, by explaining the mechanisms behind the generation of intellectual property and present suitable processes and tools important to leverage intellectual creations.

In order to identify these processes and tools we need to answer the following questions:

- What are the specific challenges in the CIs concerning structural and legislative aspects?
- Why do entrepreneurs in the CIs need to understand how to apply the concepts of property as well as of property rights concepts onto intellectual phenomena? What is the usefulness of leveraging intellectual assets?
- What would make investing in the CI more attractive? How can you “package” creative efforts using IP constructions to make them more interesting from an investor perspective? How can value be communicated? What are the success factors?
- How can an entrepreneur secure the rights to her creation?

1.4 Purpose and practical application

The aim with this master’s thesis is to describe how the management of IP can be used as a strategic tool in the CIs. In order to do this, the intention is to examine steps that the entrepreneur faces in the creation process and what considerations she ought to take in each step, and link the creation process to actions on three “arenas” (legal, administrative and business)⁴. These steps will be combined into a model demonstrating how value is created through the transformation from intellectual assets to intellectual capital. This model can be applied to the various settings the entrepreneur can face in the creative process.

Eventually, part of this master’s thesis will serve as the basis for educational material produced by the authors and representatives from CIP⁵ (a manual). CIP will contribute by developing an educational tool, incorporating role-play and interactivity, whereby participants will be introduced to the importance of:

- Evaluating the potential of
 - Ideas
 - Concepts
 - Intellectual property (IP) strength
- Packaging intellectual assets (IA) into (IP)
- Creating intellectual capital (IC) from IA & IP
- Communicating value
- Mitigating risks inherent in the construction and use of IP

1.4.1 Role-play

The educational tool expose participants to various realistic situations and the role-play can thus be adapted for varying target groups as it is designed with flexibility in mind, which renders it possible at a later stage for use in different branches of the creative industries. In this initial phase, the participants will primarily be those involved in the movie industry, using the role-play at seminars arranged by the partners in the project in order to gain more knowledge about present problems in their segment. The participants,

⁴ This concept will be explained and elaborated in 3.2.2

⁵ CIP (Center for Intellectual Property Studies)

generally with no legal background, will be presented with various problems, which highlight important aspects of IPRs, improving their legal knowledge and skills. Since participants will be exposed to challenges relevant to their specific settings and be forced to meet them appropriately, they will gain greater insight into how to use intellectual property rights strategically to their advantage, which they can later apply in real life scenarios.

We envision the project as constituting the bridge between the traditional paradigm of the creative industries and a new industry that is IC aware and able to exploit the full value of intellectual creations. The modular nature of the underlying structure of the project imbues it with great versatility and enables for future expansion for the concept to fit any situation. We have conducted several interviews with actors in the industry and based on these findings, which will be implemented and analyzed in this thesis, a role-play and an additional complementary manual will be produced.

The educational tool will contain the following:

- A manual to the Role Play
- A Role Play including story-line, a scenario and assignments
- Checklists for feedback to the assignments
- Suggested Reading Material for further reading

1.4.2 Initiator

This essay is written on the initiative of the Nordic project Capital meets Creativity⁶. The purpose with the project Capital meets Creativity is to promote communication and value-creating skills, and to raise the level of comprehension pertaining to the varying means of protection.

1.5 Delimitations

1. The thesis is written from mainly a Nordic perspective, meaning that Nordic legislation will serve as the foundation for analysis. The nature of intellectual property however requires an international outlook, not only as comparison, but also to see the direction of the future evolution of the CI; U.S. legislation and case law greatly affect the behavior of actors on the business arena while also having an impact on European legislation. EC directives have impact on Scandinavian legislation by statute and the members serve under an obligation to implement the directives. Norway and Iceland, though not union members, largely share the same legal framework due to the EEA agreement.
2. Although our aim is to illustrate problems from various viewpoints, we have chosen to put the focus on some industries of the sector, namely film and broadcasting. Nevertheless, music, internet, print and electronic publishing and video and computer games will be considered to some extent. Consequently, from an IPR perspective, our legal focus will be on copyrights, trademarks, design rights, and not patents.
3. Solutions to the prevailing difficulties regarding how to value IP will not be discussed in depth; although interesting from an investor's perspective, it does not lie within the framework of this thesis to present various valuation models.
4. Our primary focus will be from the entrepreneur /producer's perspective. Due to the versatility of the different needs of every actor involved in the CI, it is impossible to cover all important issues arising in

⁶ The project was initiated by CIM funds (Creative Industries Management), Copenhagen Business School, Film i Väst, IceTec, Lillehammer Kunnskapspark and Lillehammer University College, while Center for Intellectual Property Studies (CIP) became a part of the project at a later stage.

this context. We will nevertheless occasionally brush on several aspects that can be useful from many perspectives.

5. The technology aspect will, although highly relevant, be discussed as a framework for the specific context of the CIs, yet not analyzed in any depth. We simply conclude that with the digitalization follows consequences affecting the industry, which is also supported by the interviews.
6. The discussion on how the use of legal tools can also hamper creativity is very interesting, but far too extensive to be analyzed in any depth. Questions regarding the proper balance between the strength of protection for authors' rights and the free flow of information will not be discussed in this thesis. It is a dimension that is clearly relevant, seeing as how database protection, copyrights and DRM can be used to control information, and proprietors can block additional use of their work⁷.
7. When describing the CIs, the discussion easily turns towards cultural values. The oligopolistic state of the industry where large actors merge into media clusters have been heavily criticized in respect to restraint of freedom of information, freedom of speech, creative expression etc. This debate is mostly relevant concerning large corporations, but we still find it pertinent to mention since it highlights the vulnerability of the smaller firms in this context due to the asymmetric strength positions and the concomitant need for creating and leveraging value.
8. The suggested considerations will be mainly from a legal perspective but the business/ commercial setting will also be regarded, as we are of the belief that these contexts should not (or cannot) be separated. We will present how legal and non-legal tools can be used in order to create beneficial synergies for the individual entrepreneur, as well as for the CIs in general. In order to create a necessary understanding of the tools that will be applied to facilitate the creation of legal structures, an overview of the relevant Swedish laws will also be included.

1.6 Method

1.6.1 Research method

A qualitative method is applicable to the subject of this thesis, since the purpose of a qualitative method is to bring clearness to an unclear problem, i.e. to present a more profound description of the problem at hand, thus aiming to give a better understanding of the issue being studied⁸.

We have chosen to look more closely at the Icelandic children's show LazyTown®. LazyTown® is partnered with children's channel Nickelodeon in the U.S. and is at the time of writing just about to produce its second season. The show is based on a sole creator's idea leveraged into various value creating propositions, and for this reason, the project serves as a good example of how management of intellectual resources facilitates the commercialization of intellectual creations. We find it highly relevant to see what lessons can be learned from this project, since the basis for success is partly to be found in the systematic handling of IPRs, as well as in the creator's ability to communicate the potential of an idea. The research data becomes even more interesting in that the creator has been very skilled in personally controlling and structurally defining the commercial side of the venture, an approach not especially common among productions emanating from the Nordic countries.

⁷ These developments have been criticized, and in response, the open source movement was initiated to enable free use of software. One example of such free use can be found at <http://detritus.net>, which was established to create new works based on old ones, including both fine art and pop culture. Their aim is to encourage people to reuse culture and is of the opinion that IPRs hamper the growth of culture as well as individual creativity.

⁸ Jacobsen, D.I, Vad, hur och varför?

1.6.2 Collection of information and data

Our primary sources consist of interviews conducted with relevant actors in this industry, which have been recorded and documented in print. We were happy to get the opportunity to go to Iceland to meet four people engaged in the production of the children's show LazyTown⁹. In addition, we have conducted three interviews in Gothenburg. The interviewees come from different sectors within the CIs, including the legal-, investment- and production side as well as persons representing an entrepreneurial standpoint. This range of sources provides us with a more holistic view of the creative industries, as people from different settings may highlight different aspects. The focus of the interviews lies on extracting information regarding their perception of problems they are faced with in their specific settings; e.g. in regard to knowledge of IPRs, finances, negotiations, infringements, drawing up agreements, value creation etc.

We do not claim that our interviews can provide us with a complete picture of the reality of the situation as the number of interviewees is rather low. It is naturally important to bear aspects of subjectivity in mind, since reality is always defined from an individual point of view. However, we find the information valuable in that it contributes necessary background and context to the matters we are examining.

In regard to literature, we have chosen to apply some of the concepts pioneered by Ulf Petrusson in *Intellectual Property and Entrepreneurship* to construct our theoretical framework, as we find it interesting to apply some of the theories he presents, and try to develop the concepts to suit the creative industries. We have also used additional literature in the field of intellectual property and sources from the Internet.

1.6.3 Presentation of results

In the thesis, we will present LazyTown[®] in a case study, in order to illustrate the route of an intellectual creation from an idea to a finished product or products, exemplifying different possible events during the process wherein strategic decision-making regarding intellectual assets is a prominent part. We have chosen to use LazyTown[®] as example because it serves the purpose of covering many aspects of the process, mainly regarding ownership, licensing, infringement, commercialization and co-branding. Additionally, descriptive examples from other segments of the industry will be used as complement, so that a wide range of aspects will be highlighted.

⁹ We were awarded a scholarship from Awapatent, Stiftelse för immaterialrättslig forskning, to enable the interviews in Iceland.

2. CHARACTERISTICS OF THE CREATIVE INDUSTRIES

This chapter contains a discussion concerning the definition of the term Creative Industries and a presentation of industry-specific features. We aim at describing the creative industries in the context of the intellectualized economy, the adaptation to this new setting, and introduce the challenges in this sector.

2.1 Background

In an international comparison, it is evident that the awareness concerning the potential of the CIs is higher in the UK than in the Nordic countries. This emphasizes the need for efforts to improve the ability to manage this source of potential income and employment openings. The creative industries (CIs) do have the ability to prosper in the intellectualized economy. The CIs are forecasted to grow by 10 percent each year.¹⁰ Several factors contribute to the possibility of the swift expansion of the CIs:

- The development of commercial television channels
- The sectors can easily attract labor
- Digitalization has enabled increased possibilities for diffusion; both concerning new formats, e.g. the capacity to download and store music as computer files, and to increased windows of display, such as the possibilities of seeing movies on mobile phones.
- Product cycles are short and entry barriers are low, which makes the investment climate more risky due to the dependence on style, fashion and new technology, which increases the pressure to reach new markets.¹¹

The terms creative, cultural and entertainment industries have been interchangeable. The concept of creative industry first originated in the UK in the 90s, and the term originally covered all industries based on creativity that produced or dealt with intellectual property. The field soon narrowed down, to industries with more of a cultural focus, (although computer electronics were included as well), and this has become the most broadly accepted interpretation of the concept. Obviously, the term “creative” is indeed applicable to other industries as well - one could not claim that the car industry lacks creativity. On the contrary, intellectual values are closely connected to the cars: the perception of which values the brand entails, the design among others. For the purpose of this thesis, we use the term to describe an industry, which fundamentally rests on intellectual creations, where intellectual assets and intellectual property is the currency and the output are (abstract) products and content.

The UK has been in the forefront in this area by, at an early stage having a visionary approach and realizing the potential of the CIs, as well as actively debating and raising awareness about the profit opportunities, thus attracting investments. John Hawkins is a leading voice on creative business and provides advice to companies on strategy and business development. In the UK, the creative industry has been defined as “those industries that have their origin in individual creativity, skill and talent and which have the potential for wealth and job creation through the generation and exploitation of intellectual property”.¹² Howkins is critical to the different efforts to define CI, where a narrow definition as seen above unnecessarily separates arts and science.¹³ He considers the best definition to be “an industry where

¹⁰ United Nations Conference on Trade and Development, Creative Industries and Development, 13-18 June, 2004, UNCTAD XI, 2004

¹¹ Ibid

¹² UK Creative Industries Task Force 1997

¹³ Howkins, The creative economy, p. xiii

brain work is preponderant and where the outcome is intellectual property.”¹⁴ This way the term has a broad scope and does not exclude any industries as creativity evidently cannot be limited to only a few industries. In this thesis, we prefer to use the term more narrowly, as we want to describe the specific setting for our examination. Our definition of the CIs will therefore be one wherein the cultural focus is preponderant. The products and content are based on cultural expressions, and the output is cultural products and content, i.e. concerning mobile phones, the content constitutes of films and music. Our definition does therefore not cover industries providing weather prognoses and parking place booking as content.

A summary of what types of industries are included in the sector:

1. Heavily industrialized and commodified industries

- Advertising and marketing
- Broadcasting (the radio and television industries, including their newer cable, satellite and digital forms)
- Film industries (this includes the distribution of films on video, DVD and other formats, and via television)
- The internet industry, including website creation, portal providers
- The mobile content industry
- The music industries: recording, publishing and live performance
- Print and electronic publishing, including books, CD-ROMs, on-line databases, information services, magazines and newspapers
- The electronic interactive entertainment industries (video and computer games)

2. Less industrialized cultural and creative activities

Traditional cultural activities:

- The visual arts (painting, sculpture)
- The performing arts (theatre, opera, concerts, and dance)
- Museums and library services
- Other creative activities: crafts, fashion. They might include architecture, cultural tourism, and even sport.¹⁵

2.1.1 Nordic conditions

In order to find some indications as to the development of creative industries, we have chosen to look into statistics from a Swedish setting, which can serve as an illustration, although not entirely applicable to the conditions in the other Nordic countries. The term “Creative Industry” does not exist as a term in SCB¹⁶, but we have come across the category entitled “Recreation, culture and sports” and used a few of its sub groups¹⁷ to get an understanding of the development. We have chosen to compare the industry’s figures for 1997 and 2003 and the chosen parameters are the number of companies, number of employees, net turnover and net investments.

¹⁴ John Howkins at <http://www.creativelondon.org.uk/upload/pdf/JohnHowkinstalk.pdf>

¹⁵ Carmen Marcus, European Commission Community Research: Future of Creative Industries, Implications for Research Policy, April 2005 (EUR 21471)

¹⁶ The Swedish Bureau for Statistics provides official statistics from various spheres in the Swedish society, which forms the basis for decisions, public debate and research.

¹⁷ Groups: production & distribution companies in film and video, movie theaters, radio & TV networks, artists & producers of creative works, theaters & concert halls.

Table 1 Development of the Creative Industries^{18, 19}

	Number of Companies	Number of Employees	Net turnover (MSEK)	Net investments (MSEK)
1997	8818	17256	18495	655
2003	19810	16246	30448	797

Net investments have not really increased and the number of employees has decreased, however, the net turnover and the number of companies has nearly doubled during this period. As the number of employees has decreased despite the increased number of enterprises, we can assume that the emerging companies have few employees, and accordingly are rather small businesses. As the net investments have not increased, we can also assume that many of the new enterprises have to manage with no or little investments from investors. The fact that the number of employees in this sector has decreased also supports our assumption regarding the potential for more employment openings²⁰.

2.1.2 Legal framework

Copyright legislation is the most common form of protection in this industry, and the emergence is automatic as opposed to patents, registered designs or registered trademarks²¹ an is thus an un-registered right in the Nordic countries.

Consequently it comes into effect immediately as soon as something that can be protected is created and “fixed” in some way, e.g. on film, paper, via sound recording etc. and thereby constitute the most obvious form of protection. As opposed to registered IPRs, uncertainties can arise concerning ownership since there are no requirements to register, as well as concerning the evidential burden to prove that the alleged infringement actually exists; is it really a work? Another difficulty is the need to prove copying; that the allegedly infringing work existed after and has its genesis in the original.

Trademark and design rights are also highly relevant to complement the copyright, because intellectual creations when manifested often consist of various parts that can be separated. Different legal and non-legal tools can thus protect different parts.²²

2.1.3 Legal tools enabling growth

Ulf Petrusson describes the development in the CIs where copyright became a tool to create value: “Management of copyrights, constituted the basis for the emergence of commercial roles, such as agents, producers, publishers and distributors. /.../ (it) also generated contractual networks of artists, managers and distributors, in which each transaction established a potential extraction of financial value.”²³ Petrusson means that the claiming of a copyright enabled the actors not only to prevent others from copying their work, but did in fact constitute the foundation for the growth of the CIs – now you could leverage a single work by presenting and adapting it in/to different forms: books, comics, films, TV-shows, computer games etc. The technological tools, e.g. cable television, satellite-based broadcasting systems, and the tools offered by legislation this way worked together in the creation of new ventures and new markets.

¹⁸ www.scb.se

¹⁹ <http://www.ssd.scb.se/databaser/makro/MainTable.asp?yp=bergman&xu=scb&omradekod=Nv&omradetext=N%E4ringsverksamhet&lang=1> (collected 2006-01-02)

²⁰ As regards national economy, creative productions such as a movie production is profitable since it creates work in many directions such as catering, hotels, car rentals, musicians, designers technicians, advertising agencies etc. Anita Oxburgh, Migma Film AB, *Entreprenör* issue 10, 2005.

²¹ Jolly & Philpott (eds.): A handbook of intellectual property rights, *Hard rights versus soft rights*, p. 15

²² Example of non-legal tools is digital rights management (DRM), which will not be touched upon in this report.

²³ Petrusson, p. 35

Petrusson mentions the right to rent out records as an example of a construction that enabled a commercial activity that could otherwise have been prevented by the proprietor. Concerning film rentals both the retailers and customers enter into license agreements to enable the transaction. This is an example of how you can find additional ways to profit from an intellectual creation, in this case a movie, by using the tools of licensing networks to administer the boundaries of what is and is not permitted. A completely new market was created and the proprietors received profits each time their movie was rented out.

2.1.4 Actors and products

The spread between large and small firms, public funding, ownership balancing between public and private entities and the focus on art and culture are all aspects relevant in the CIs. Firms in music, design, animation, publishing and entertainment all rely on SMEs²⁴ and creative entrepreneurs hired to perform in short-lived projects.

The products and services emanating from the CIs have both a tangible element such as the platform or product format²⁵ and an intangible element, which determines their content, through meaning or symbolic representation. Other products can be “completely intangible”, e.g. a film streamed to a computer or music streamed to the Internet, or streaming interactive games. These latter has characteristics of a public good such as non-rivalry and non-excludability in consumption, which means that if one person consumes the good, it is difficult to prevent another from doing so as well, while at the same time the consumption does not affect the sustainability of the good.

2.1.5 Asymmetric business relations

The CIs consist of big players acting on an international level with large-scale production, promotion and distribution, as well as SMEs. Large corporations (Time Warner, Disney, and Viacom) often cover many sectors of the industry. One of the reasons for this is according to Ruth Towse²⁶, the economic characteristics of monopolies: “/.../ high set-up costs for content and low/negligible marginal costs of delivery /.../. These features are responsible, at least in an analogue environment, for market concentration into an oligopolistic industrial structure with a few large firms dominating the industries.”²⁷ The asymmetric bargaining power of the firms vis-à-vis the individual content creator is according to Towse explained by these oligopolies in combination with the weak organization of the individuals in the very competitive setting where the employment structures are short-term and project based.

The imbalanced access to capital markets, where the creators only have their intellectual creation as collateral, while the large firms can pool risks by having broad asset portfolios is an additional dimension of the asymmetry. She points out that IPRs are in this case not very helpful, if the creator is in a position where she has to sell the work in order to pay the rent.

Naomi Klein also criticizes such clusters wherein the large actors monopolize culture. She explains the merger phenomenon by the urge to create synergies: it was not enough to be the largest film studio or the most successful TV channel; they had to involve everything from cable networks, books, music, theme parks etc. Klein exemplifies with Viacom’s purchase of Blockbuster Video and Paramount Pictures, where they obtained control and profit from playing the movies in the theaters, and later when distributed on

²⁴ Small-medium sized businesses

²⁵ inter alias CD/DVD, computer disc, printed paper, film reel, mobile phone, memory cartridge, personal digital assistant (PDA)

²⁶ Ruth Towse is an acclaimed expert in the area of the economy of copyright and the effects for the authors.

²⁷ Copyright and cultural policy for the creative industries, p. 426, Ruth Towse, Economics, Law and Intellectual Property, (ed.) Ove Granstrand.

video as well, thus controlling large parts of the value chain. The line between content producers and distributors are no longer as clear-cut as the activities in the sectors are overlapping. The success of the synergies cannot be measured by how well a movie or book is doing, but how they are transported via all the multimedia channels of the conglomerate.²⁸ The biggest threat of the clustering is the potential of restraining the media supply; Klein describes it as a sort of “corporate censorship” where cover art on CD’s is being altered to fit Kmart, and Blockbuster Video is turning down movies for not matching its image of being family friendly²⁹. This not only affects the supply, but also what is being produced in the first place, and in a more subtle form restrains free expression. When the involved companies are responsible for producing news the risks become even more evident. There have been incidents where stories have been discarded for not fitting the interests of the owners³⁰. In Sweden the equivalence of oligopolies can be found in the media conglomerates such as Bonniers and Schibstedt, owning various media institutions (newspapers, TV, books etc.), and with interests in the Anti Piracy Bureau as well.

Power asymmetry also has other negative implications, such as concerning the contract writing process if one party is in a position to dictate the conditions. Should an actor step outside the implied boundaries, she could be shut out from doing business, since such behavior could evoke resentment among other players. This can easily lead to arbitrariness - actors can try to shut out unwanted competitors from the marketplace, especially where the balance of power and size works to the advantage of one party. The “rules”, although fitting the specific industry, are determined by, and probably mostly serving, the larger, more powerful actors.

2.1.6 Rights management

One characteristic for the industry is the multitude of people involved at an early stage of a production, which consequently raises questions about proprietorship. Several copyrights can emanate from one film production, and in order to facilitate the completion process, standard agreements are common wherein rights can be assigned. Another way to enable a more smooth way of rights surveillance is the various organizations acting for the authors. These organizations can be responsible for different tasks. Some organizations are holders of rights whereas others represent the right holders. A few organizations only have administrative tasks. The collective handling of copyrights is valuable for the artists as well as for the production companies/television networks. In the Nordic countries, one such organization is Nordisk Copyright Bureau, NCB. NCB is a non-profit copyright organization acting on behalf of composers, lyricists and music publishers, administrating copyrights in recording and production of music on CD, DVD, film, video etc. The organization is a cooperation between the national performing rights societies; KODA (Denmark), STEF (Iceland), STIM (Sweden), TEOSTO (Finland) and TONO (Norway). Societies from the Baltic nations are also involved. By agreement, NCB can administrate royalties also when artist’s music is recorded outside NCB’s territory.

2.2 Industry-specific challenges

The interviews reveal a concern regarding the changing habits of listening, seeing or experiencing media due to digitalization. The development entails challenges and opportunities to the industry in several ways: how to secure profit, how to adapt the legislation, how to handle distribution and how to organize future

²⁸ Naomi Klein, No logo, p. 146-149

²⁹ Naomi Klein, No logo, p. 166

³⁰ ABC News dropped a story that put Disney in a bad light in September 1998. Another example of censorship is Google’s China launch of their search engine, where some sites are inaccessible, and a search for Falun Gong will direct you to condemnatory articles.

business models. Due to the characteristics of intangibles, it can also be a difficult task for the legislators to ensure conformity to such property right concepts. From a business perspective, it can be challenging to secure profit for the content as it can be diffused unwarrantedly.

2.2.1 Unadapted legislation

The music and film sectors perceive the new technology as a big threat mainly in terms of decreased profits due to uncontrollable and unwarranted spread of copyrighted work, and are trying to restrict the spreading by various means (DRM, lobbying for stricter legislation). The District Court in Västerås stated in the verdict against a file sharer that illegal file sharing has severe negative effects on the film industry and should therefore be considered as serious violations. Although the Anti Piracy Bureaus' battle for conformity to the new copyright legislation may have scared the file sharers enough to temporarily hampers these activities, it is not a feasible long-term solution. Adversaries claim neither the film industry nor the music industry have suffered great economic losses due to the activities on the Internet. In fact, a study conducted by Felix Oberholzer-Gee³¹ showed that the consumers continuously spend the same amount of money on entertainment in spite of the possibilities to get access to the work illegally. The conclusion to be made from this is that the revenue streams now go to other recipients.

Oberholzer-Gee predicts that these activities will continue regardless of the strength of copyright protection, and the industry should therefore instead adapt to new business models rather than proclaiming war against file-sharers.³² As the file sharing networks are forced to shut down the risk with proclaiming war becomes evident - creative file sharers will come up with new technical means to keep their activities going. Jonas Birgersson³³ considers it futile to believe that "smart people with thick glasses" will give up the fight; instead, he predicts that the infuriated masses will be provided with an incentive to concentrate their activities to developing a "darknet" where all tracks of the users are untraceable.³⁴ This can have detrimental effects, as the control over the Internet will be reduced.

The legislation surrounding intellectual creations are in many respects unclear, creations are handled differently in the U.S and in Europe as we will see further on in the report, and the issue regarding which assets that should be awarded property status is debated. Some assets are being handled as property, yet are not categorized as IP.

2.2.2 New business models

Birgersson and Oberholzer-Gee agree that the efforts rather should be on creating new business models and claim that CIs have nothing to fear as long as consumers still spend money on entertainment, it is just a question of profit allocation. The industry need to abandon the notion of an "after market" - as the work becomes available through various distribution windows, the market is every screen and the chain of events is no longer sequential. The once prospering movie theatres and television channels need to offer other types of extraordinary experiences in order to compete, like wining and dining while seeing a movie, or screening the premiere of a movie where the consumers pay for a red carpet experience in their own homes while sharing it with millions of other viewers.

Oberholzer-Gee states that the new dominant business model in the music industry revolves around sale of complements, and proclaims Apple as the most important company in music. Decreasing profits

³¹ Associate professor at the Strategy unit at Harvard Business School.

³² Presented at seminar "IP and the movie business in the digital era" at Gothenburg Filmfestival 2006-01-28.

³³ Entrepreneur and IT-expert, participator at the seminar "IP and the movie business in the digital era" at Gothenburg Filmfestival 2006-01-28.

³⁴ Presented at seminar "IP and the movie business in the digital era" at Gothenburg Filmfestival 2006-01-28.

from the sale of CDs does not entail the collapse of the music industry as such; people will not stop making music. The money however must come from different sources, and he mentions merchandize as an example.

The figures in his study of the American movie industry indicate that the accrument of revenues is concentrated in time when a movie is released: 27 % the first weekend, and 40 % the first week. He could determine that file sharing activities affect the Box Office negatively, although the effect is, rather small. His suggestion for the actors in the film industry is to try to protect the movie for the first week, where the potential for profit is largest. Business models centered on complements will as with the music industry flourish. Children's TV market is \$ 2 Billion in the U.S., and the market for children's licensed products is \$ 132 Billion. Lifestyle complements and product placement become more common. Oberholzer-Gee give the movie Cell Phone as example; the use of Motorola's latest cell phone covered all production costs and the entire investments were recouped before release.

From a Nordic perspective, it can be concluded that creators to a larger extent need to put in their own money in productions, and as film productions are capital intense; it is difficult to get their investment back. According to Charlotte Lilliestierna Ehrén³⁵ we move towards relying less on governmental support and more on venture capital. She is of the opinion that copyright has adapted well to analogue changes, but with the digitalization comes new challenges. Lilliestierna Ehrén and Oberholzer-Gee agree that the consumers should be provided with legal means of obtaining content on the Internet³⁶.

What were formerly labeled "after markets" are now the most powerful source for revenue. The life cycle of a motion picture used to separate a film's debut in the theatres with the availability in other formats and the broadcast on pay cable and free TV. Traditionally, studios could make large profits by delaying the release to the ancillary market. Today, in the digital era, there is no such thing as an *after* market – the market consists of every available screen: from the home computer to iPods and cell phones thus enabling simultaneous releases. Director Steven Soderbergh created quite a stir when his latest motion picture "Bubble" was released at theatres, cable TV and on DVD in a four-day span³⁷. This so-called day-and-date distribution strategy is perceived as a threat by the studios and theatre owners, but also by some directors who claim that theatre going is a vital part of the movie experience³⁸. It is an illustrative example of an alteration of the revenue sources, and the need to change the business models.

It is however important to emphasize that successful capitalization is not possible if you have a business model that is not adapted to the prerequisites set by the new era. Jonas Birgersson considers the anxiety in the industry regarding decreasing profit uncalled for since consumers are willing to pay for the right thing at the right price. He is of the opinion that the focus instead should be on aligning the rules in the new society with the technological development.

2.2.3 Legal uncertainties

One factor creating an increased need for IP management has to do with the globalization of markets, where actors are trading and handling intellectual assets on an international arena. In this aspect copyright

³⁵ Bachelor of Law, specialist in copyright, participator at the seminar "IP and the movie business in the digital era" at Gothenburg Filmfestival 2006-01-28.

³⁶ SF Anytime is an example of a legal solution; it is a video on demand service, requiring broad band connection, where feature films as well as TV programs can be rented. The content is streamed.

³⁷ It premiered 2006-01-27 in the U.S.

³⁸ "I know it's hard to argue with the convenience and immediacy of large high-definition TV screens in the comfort of your home versus the often irritating rigmarole of going out to the movies. But, I would still argue for it." Quote by Woody Allen, collected from LA Times, 2006-01-22, 'Bubble bursts film tradition', Claudia Eller

is a kind of IPR that can be useful since its scope is international³⁹ and arises automatically. A drawback with copyright is however that the requirements are rather low which entails extensive possibilities to use someone else's copyrighted work as inspiration, why it can be difficult to claim that someone is infringing your work. Since copyright arises automatically, the existence of copyright is not formally established until there is an actual dispute and the matter is settled in court. As there are no requirements for registration according to this act, it can be difficult to determine when copyright protection arises and should therefore be complemented with another kind of protection if possible. Registered rights, such as trademark and design rights, are easier to claim due to the registration requirement and the prior art searches conducted in order to enable registration. The trademark protection is however territorially restricted, i.e. the protection is obtained only in the country where it is registered why it does not serve as complement to the copyright protection in countries where it has not been registered.

In such cases where protection can be issued under more than one IP law, i.e. where the acts overlap, it is important to think strategically in terms of choosing relevant protection; the implication could be that the actual protection is weakened. This happened in the LEGO® case, where LEGO® chose to patent the technical function of its famous bricks. Twenty years later LEGO® got aware that the patent expired, consequently the fix function is now free to use by competitors. If LEGO® instead would have chosen to protect the bricks under the Trademark act as a shape mark; the protection could have been infinite. The design right act could have been an alternative, although it would only have prolonged the protection with five years. Patents are considered the strongest protection of them all, because of this, LEGO® did not succeed to claim that the weaker shape mark was going to 'take over' after the sinking patent." Trademark law should not be used to perpetuate monopoly rights enjoyed under now-expired patents," the Supreme Court says.

By being able to claim ownership over the intellectual content the right holder obtains an exclusive right to control the same. This entails that others are restricted from copying this unique expression of creativity with some exceptions. In some cases where property status has not been granted, the creations are nevertheless being treated as property. TV-formats for instance, are being licensed all over the world, yet people are waiting for the court case that determines in which ways formats can be protected⁴⁰, and the actors are simply acting on the notion that formats constitute some form of property.

Another aspect concerns the differences in how intellectual property rights are handled from nation to nation. A problem that becomes evident when comparing how the approaches vary in different nations is that there will be concerns regarding the predictability of the systems. If a claim of an intellectual phenomenon is validated in one country and not another, destructive uncertainties will occur. They can probably not be completely avoided, since the legal tools are national, but the construction of intellectual concepts as property is as mentioned taking place in an international arena. This explains why the position of US legislators can have a normative impact in Scandinavia as well.

The obvious negative consequence of these features has to do with legal uncertainty. Whenever an implicit understanding becomes a substitute where an area is unregulated by law, unclear situations are bound to come up in the event of a dispute. As predictability is a cornerstone in any business, consequentially, contract writing becomes far more significant in this setting in order to govern every eventuality. This requires first-rate knowledge from all parties to ensure a solid base for a business relationship. However, uncertainty can work to the advantage for a well-prepared company as well. When the legal protection is uncertain it is possible for an actor to claim a larger scope of protection than the court actually would accept, and this allows an IP-aware actor to make communicative claims that exploit the uncertainty in the system.

³⁹ Valid in all countries which are parties to the Bern Convention

⁴⁰ We were asked whether formats could be protected by the lawyer working for SVT.

2.2.4 Attracting investment

SMEs in the industry experience various problems attributed to the lack of funds according to the interviews. Reluctance among private investors⁴¹ to invest in this sector can to some extent be explained by the perception of CI as an “exceptional” sector. The CIs have not been included in the networks utilized by most private investors, so the creative businesses have nowhere to turn to pursue investment, at the same time as the investor lack essential knowledge needed to separate the wheat from the chaff when reviewing business prospects.

Secondly, it can be troublesome for the creative businesses to assess and protect the commercial value of the intellectual assets, and thus the ability to create and extract value diminishes. It is debatable whether the reliance on public funding have further “alienated” the sector in comparison to other more traditional ones. In addition, a heavy dependence on public funding will not serve the CIs on a long-term perspective, but will distract from the need for a sustainable private market.

So how can intellectual phenomena be leveraged according to the existing prerequisites in this industry, thus become more attractive to investors? In technical fields, the patent serves as a weighty bargaining tool, as well as a means to communicate the trustworthiness of an invention. As there are no patents to apply for in the creative industries, it has to rely on the legal tools given in this setting. The conducted interviews reveal a lack of knowledge concerning the handling of intellectual phenomena. Is the business structures surrounding intellectual phenomena established, the potential for intellectual phenomena to generate value is increased. In order to increase the possibilities to obtain investments and to augment return on investments done in the creative industries, we need to look into the possibilities of using intellectual assets, transform it into intellectual property and then achieve value creation based on the intellectual property. Accordingly, the aim is to leverage the intellectual assets, thus creating a more attractive offer to the investors.

As funding is a crucial and fundamental element when building a project, we have put forth the question of what investors consider most important in order to invest in the creative industries. By understanding this, we will be able to pinpoint the actions entrepreneurs ought to consider when realizing a project. Poor communication between investors and creators is pointed out as a big problem in the interviews; the challenge for the entrepreneur is to convince the investor of the value of the idea, when investors on the other hand are more inclined to see the potential of tangible assets⁴². The one intangible property investors seem to recognize is the patent, as the connotation of the word has the consequence that an investment in a patented invention is believed to be a more reliable object. Copyright is considered as a more fuzzy right, and investors are therefore more hesitant to invest in ventures where copyright is the main asset (this will be further elaborated in 3.3.3) So how can other CI inherent IPRs achieve the same level of credibility?

Even if a creative business has the ability to appreciate the potential for commercial value, it can still be difficult to exploit it fully. When starting or growing a business producing licensable content, the starting costs are high, because the financing and acquiring of the appropriate commercial and legal knowledge in order to license the content effectively can be time consuming. As an effect, the ability to create content with enough production values even to be considered by the investors can be decreased. Another negative effect is the impact on the bargaining position in a negotiation.

⁴¹ private investors = business angels, syndicates, venture capitalists, corporate ventures

⁴² When the full value is hidden, private investors will be averse to invest in them, as in the CI as a whole. If the parties do not know how to communicate; i.e. where the investors and the creator speak different languages, it becomes even more important to raise IP awareness. By increasing IP awareness, the ability to communicate value to prospective investors will increase, while the investors will be able to appreciate the potential and in so doing enable successful capitalization of creative efforts.

Increased investments in the industry could enable proliferation and survival rate among SMEs benefiting culture, competition, creating employment opportunities and additional synergies in other industries. Naturally, the investors focus on securing a return on the investment, by performing a due diligence⁴³ and examining the potential and skills of the segment, market, team, and potential for exit. Risk taking is an unavoidable issue for investors, but exposure to financial risk is not as intimidating as legal risks. Due to the under-investment in start-ups and small and medium enterprises (SMEs), full potential cannot be achieved, while at the same time social and cultural benefits are lost. Should the private investor market develop, social and cultural goals can be realized, while the dependence on public funding will lessen. This brings up another aspect of the creative industries; the potential synergies, which, although difficult to quantify, have a positive social and economic impact: businesses in the CIs adds to the success of businesses in other sectors, for instance by helping them to improve designs and enhance brands, and by providing content for new technology platforms. Regions can also benefit by becoming more attractive for other businesses as well as increased tourism.⁴⁴

⁴³ Due diligence is the process of examining a corporation as one of the first steps in a pending merger, equity investment etc., with the goal of understanding the risks associated with the deal. Issues that could be reviewed include corporate capitalization, material agreements, litigation history, public filings, intellectual property and IT systems.

⁴⁴ This is based on “Investing in creative industries report” April 2005, NESTA: National Endowment for Science, Technology and Art is a source of funding, but is also working to facilitate investment in the sector.

3. INTELLECTUAL CAPITAL MANAGEMENT: HOW VALUE IS CREATED

In order to understand the necessity of mastering the processes of constructing property and packaging intellectual assets, the concept of the communicative game is introduced and linked to three arenas. The process of leveraging intellectual assets into intellectual capital will be presented as a management system, demonstrated in a model, which will later on serve as a foundation for our analysis.

3.1 Background

The theories on Intellectual Capital Management (ICM) that we apply in this masters' thesis derive mainly from the work of Ulf Petrusson⁴⁵. Peterson's theories illustrate how to understand and use patentable innovations, trademarks, copyrights, licenses, trade secrets, brands, etc. in the construction of business, thus developing a management theory on how to extract value from intellectual property. Even though the theories are adapted for entrepreneurship in the ICT (Information and Communication Technology) and biotechnology sectors, we believe that many of the concepts and analytical approaches applied in these settings are also applicable to the creative industry as the common denominators intellectual assets, intellectual property and intellectual capital are the foundation in the latter sector as well.⁴⁶

Applying these theories enables us to point out the intellectual resources within the creative industries and show their potential to constitute intellectual property for the creator and thereby constitute means for value creation. If the entrepreneur has the tools needed to leverage intellectual resource she will, according to Petrusson, gain the confidence and self-esteem necessary to present convincing communicative actions in the business arena, leading to loyalty and trust. The result of managing intellectual resources should be that they are accepted, acted upon and trusted by others acting in various settings.

Below we will introduce the concepts we will use when analyzing the intellectual resources in the creative industries.

3.2 Theoretical definitions

When referring to intellectual resources it is necessary to establish an internally consistent theoretical framework, in which the different concepts intellectual assets, intellectual property and intellectual capital are defined. At first glance, they appear quite similar, and the definitions do in fact overlap to some extent, while at the same time they interact and are interdependent. It is important to bear in mind that there is not *one* established definition, and we will present our interpretation of the concepts below. The management of these resources takes place on three arenas: the administrative, the judicial, and the business arena. The resource management is conducted in different manners depending on the setting: whether it involves obtaining ownership, resolving disputes, or establishing partnerships inter alias.

⁴⁵ Director of the Center for Intellectual Property Studies (CIP), Professor of law at Gothenburg University and author of *Intellectual Property and Entrepreneurship*.

⁴⁶ Petrusson, p. XIV

3.2.1 Intellectual assets, intellectual property and intellectual capital

Intellectual assets serve as the foundation for value creation and define those intangible assets not reported in corporation's balance sheets, but still count as a driving force in the creation of corporate wealth. Databases and customer lists are both examples of intelligence transformed into useful assets, as it is packaged and given a coherent form. Applied to the creative industry, such assets would for example, consist of plot lines, character roles, and competition forms which can be packaged and defined as a new TV-format. In order to enable value creation, packaging the asset into a legal construction and claiming ownership is vital.

Intellectual assets that enjoy legal protection in the form of patents, copyrights, trademarks or design rights, constitute *intellectual property*. Ownership of the property can be claimed by registration, arise automatically or by assignment of rights. Contract law is not really a theory of property, but it can provide a pervasive means of protection by agreements of licensing, employment, confidentiality etc.

Intellectual capital constitutes commercialized IP bringing value to the company. The value of the assets comes from the legal property rights associated with the ownership, including the right to exclude others from exploiting, commercializing, selling, leasing, licensing, using, and transferring the intangible asset. IA and IP are at this stage leveraged into value propositions as well as turned into "objects" useable as collateral and other forms of security. At this stage, intellectual resources are represented both in the balance sheet and as taxable assets.

3.2.2 Three Arenas – administrative, judicial and business.

Regardless of the line of business, actors establishing new ventures are subject to administrative, legal and business implications affecting their company one way or the other when establishing business structures. Ulf Petrusson presents three interacting arenas where this business construction takes place.⁴⁷ For an actor in the business arena, it is according to Petrusson crucial to understand that communicative actions in the administrative and judicial arenas will inevitably affect the success of the business venture. An example of this process is the communication taking place on the administrative arena in order to register an IP, and as the application has been approved it will (hopefully) be respected among the actors in the business arena, but if a dispute arises, the right to exclude others from unwarranted use can be endorsed in the judicial arena.

Another important feature is that the administrative and judicial arenas are primarily national while the business arena is often international. This emphasizes the significance of being able to get claims recognized, on a national level as well as on an international. By taking a constructionist approach, i.e. by developing an awareness of the different categories of intellectual resources and the arenas on which they are constructed, the entrepreneur can build a successful business. By recognizing the mechanisms of the different arenas, and by developing a strategy, which includes taking these into consideration, the intellectual capital can be managed to enable optimal value creation.

Administrative arena

The administrative arena consists of institutions such as patent offices and courts of appeal. Intellectual creations that can be registered in the administrative arena tend to be accepted and trusted more than assets which cannot, and this arena is therefore important when intellectual assets are being claimed as intellectual property. The majority of IPRs are based on an administrative registration systems, but in some countries the claiming of certain IPRs is based on both a registration system and a possibility to claim property by proving usage of the e.g. mark or design. As regards copyright, there is no administrative

⁴⁷ Petrusson pp. 104-105

arena in the Nordic countries since the right arises automatically at the time of creation, and there are no requirements for registration.

Judicial arena

In the judicial arena, conflicts are resolved through strict adherence to regulative frameworks and sanctioning infractions. The state can punish actors who infringe on the IPRs of others, and the purpose of the judicial arena in this setting is to uphold the sanctity of IPRs. If something can be reliably protected in the judicial arena, it can at the same time be claimed to constitute property in the business arena.

This arena is relevant if disputes occur, but also as a preventative measure to consider before actions are taken in the business arena. A prognosis based on experience from the judicial arena is useful in order to foresee how the courts *would* deem a certain course of action in case of dispute, and by knowing this in advance, disputes can be prevented. The prognosis can also be used as an argument and create negotiation advantages in the business arena.

When contracts are used in the business arena in order to claim property, this is done based on the assumption that the contract will in fact be upheld in the judicial arena.

Business arena

This arena is the most important from an entrepreneurial perspective. Business considerations should always be made with the effects of the supporting arenas in mind. All decisions in the business arena are dependent on how they are communicated and trusted in the administrative and judicial arenas.

3.3 Constructing property

In order to enhance and promote innovation, entrepreneurship and creativity it is, as Petrusson points out, of utmost importance that properties and assets are perceived as trustworthy because “innovations based solely on intellectual and virtual constructions tend not to be respected as assets or capital. If the values are not being realized or captured in the production of material artifacts, then they tend to be considered as too uncertain to conceptualize⁴⁸.” This statement illustrates the necessity of a more thorough examination of the property concept, and what it entails.

3.3.1 How to construct property?

The legal constructionist approach, endorsed by Petrusson, aims to illustrate how people use legal concepts, and how these concepts at the same time interoperate with concepts created and primarily employed by actors in the business arena⁴⁹. The perception of law as something that can be constructed and designed rather than something fixed leads to the view of IP and IPRs as means when designing the business: establishing licensing, franchising and merchandizing agreements, using IP in security transactions etc. The constructionist approach also provides a tool to forecast if and how your claims will be accepted in the three arenas, and adapts the construction of the venture to the specific context. When the perceptions differ, as we will see is the case with patents on storylines (below 3.2.2), a prediction of how a claim will be received is more difficult to make. It is nevertheless valuable to realize that communication is a tool when designing a venture in order to achieve the best possible result, by using and applying legal concepts onto intellectual creations.

⁴⁸ Petrusson, p. 36

⁴⁹ Ibid., p. 383

Petrusson is of the opinion that enabling trust in property concepts will make other intellectual structures adapt to the intellectualized economy as a corollary⁵⁰. If it is possible for an actor to convincingly communicate the property concept she puts forward as a 'real' claim, she has also succeeded in realizing sequential opportunities. An example of this is when you buy property; a sequential opportunity would be that you will also have the right to sell, lease and rent the property⁵¹. Intellectual properties must function as value generating objects in order to be recognized and respected at a communicative and enacting level, as opposed to physical properties. The value of an intangible asset arises largely from the property right status associated with the asset. The objectification of intellectual creations, meaning the process of claiming property status for intellectual creations, has for instance enabled the development where patents are used as collateral in financial arrangements. It is also possible to claim properties through the use of contracts; the assumption that the specific contract will be upheld in the judicial arena generates the potential to claim the TV-format as an IP.⁵²

The conceptualization of intangible assets is crucial for the construction of business ventures and sustainable economic growth based on intellectual value. These aspects are all part of the communicative game in which the actors, provided that they have the proper awareness, can influence how their claims are received. Regulation, court decisions, scholars' views and administrative behavior all have an impact on how the concepts of the property right are perceived. Several intellectual creations will most likely be awarded property status (e.g. databases, domain names)⁵³, but it is only when these are accepted by society, i.e. trusted, that they can be used in a practical reality. As the value of the asset is dependent on the property right linked to it, it is very important to develop an understanding of the possibilities of using IPRs as tools in the design of a venture.

3.3.2 Why apply property constructions?

Applying property and property rights concepts onto intellectual creations enables the rights-holder to claim ownership. A corollary of communicating the perception of an intangible phenomenon as intellectual property is the possibility to profit from intellectual creations and that unlawful use would be considered as a violation of property rights. An example of the latter is copyright in digital content, where you can accuse unwarranted use as being cyber squatting⁵⁴. Petrusson explains this process as the creation of implications for how the property should be perceived according to the claimant: “/.../ the act of claiming something as a property creates a number of consequential beliefs, i.e. norm experiences: 1) a property is something that I and only I shall have the right to enjoy the fruits of, 2) if someone else tries to enjoy these fruits I have the right to hinder that person, and 3) I have the right to sell and in other ways transfer the property and thereby generate income.”⁵⁵ The act of claiming ownership is therefore an important step when constructing a successful venture, in regard to establishing control necessary to reap profit.

⁵⁰ Ibid, pp. 5, 119

⁵¹ Petrusson, p. 30

⁵² This mainly builds on one of the concepts developed in Intellectual Property & Entrepreneurship, Ulf Petrusson regarding the “communicative game”; how the claiming is carried out affects the enacting and reception of the claim in the different arenas.

⁵³ Ibid p. 28

⁵⁴ Ibid p. 26

⁵⁵ Ibid p. 29

3.3.3 Expanding the property construction

The legal areas concerning IPRs are to some extent characterized by uncertainty. When technology creates new possibilities and the legislative machinery cannot keep up with that development, it is very important for people who are dealing with intangible assets to be able to make accurate prognoses of how a claim will be met. Efforts to identify intangible assets as property, and thus claiming ownership to the intellectual creation in question, can serve as relevant examples of communicative claims in constructing property. In order to demonstrate the response of the market to differences in legislative scope, which can vary from nation to nation, we will examine a situation in which property constructions can be established entirely on the business arena, without formal support on the administrative and judicial arenas.

TV-formats

TV-formats are in spite of their somewhat uncertain legal position⁵⁶, nevertheless being traded and generating large amounts for actors in the creative industries. Accordingly, formats are in reality treated as property. Even though there is no copyright to breach, mutual respect within the industry is a very important and effective tool in order to keep TV-formats protected. The TV-format industry rests upon the notion that the actors within the industry accept that the concepts constituting a TV-format constitute property and should therefore not be infringed upon. This is an interesting example of how the actors can act on the business arena outside the scope of the legal sphere, and have reached an agreement, although not explicit, regarding how a certain class of intangibles should be handled. However, there are examples of when the threat of getting a bad reputation in the industry is not enough to deter from imitation. The successful production company Endemol (responsible for Big Brother etc.) has been pursuing legal action against the makers of "Való Világ", which is Hungarian for Real World, in the Czech Republic, Slovakia and Hungary on grounds of copyright infringement and unfair competition and has previously won a case in Croatia concerning unauthorized use of trademark and format of Big Brother. In that case a Croatian channel used the trademark, inter alia when marketing their show as the "Croatian version of Big Brother". Endemol's IP Rights Manager Wim Hoen states: "in Central Europe there are many copycats. It is crucial that we deal with such matters. Our victory in Croatia lawsuit (sic) gives us confidence for other possible cases in the future"⁵⁷. Mike Morley, the Director of Commercial and Creative Affairs, considers the ruling to be a step in the right direction towards enabling "proper protection" of TV-formats, as well as a deterrent for other potential infringers. Another example is when the US channel CBS, which licensed in the "Survivor" format, claimed that the TV show "I'm a Celebrity... Get Me Out of Here!" ought to be banned based on the substantial similarities between the two programs. Even though the shows, which both deal with survival skills in a hostile environment, feature similar and even identical challenges, as well as a voting-off process until a winner is determined, the two shows were not considered substantially similar by the judge. It was determined that developing TV programs is a process that involves frequent borrowing from what has been previously broadcasted.

The mutual respect between the actors that the industry rest on seem to be fading away, and suspected cases of plagiarism are proliferating. The first court case in Sweden to deal with the subject of TV-format plagiarism is currently being tried, in which a production company is accused of copyright infringement and of breaching trade secrecy. The entrepreneur with the idea had been in contact with one production company, but was not happy with the offer and therefore turned to a competitor where a pilot was produced. When the pilot was displayed to potential buyers, it turned out that one channel had already been presented to almost an identical pilot. This is an example of how the so-called gentleman's

⁵⁶ TV-formats are not protected by Copyright in Sweden, as they are merely considered a collection of ideas.

⁵⁷ <http://www.endemol.com/newsitem.xml?id=369>

approach in the industry is gradually being phased out. It becomes hazardous to pay a lot of money for an original idea only to see a cheap copy being broadcasted elsewhere. However, the end-product might be of a higher quality as input from the best parts of different formats can be combined into one. As the existing formats in the entertainment largely are based on reality storytelling, it is difficult to separate them, and to claim that it has unique qualities in a legal sense to obtain copyright protection. It therefore becomes more important to claim other elements of the concept under the stronger means of existing protection i.e. the trademark and design rights acts instead: to protect the name of the production as a trademark, protect the stage design as a design right, the logo as a trademark. By securing rights to different intellectual objects in a production the right holder establishes structures that not only can exclude others from taking advantage of one's creative efforts, it can also enable revenue streams through other means than the ordinary means of distribution/broadcasting. Protecting a trademark does for instance open up for exploiting values connected to the trademark, such as co-branding and merchandizing.

Worth mentioning is also that it is not only the constructions that enable ownership over an intellectual creation that in fact provide protection. The Marketing Practices Act for instance, can in cases where the matter concerns theft of good will, be applicable. The Danish version of "Kvit eller Dobbelt" was perceived as a Danish version of the English format. It was found that the Danish producer had consciously taken advantage of the position on the market that the English producer Celador had attained. In conclusion, a format can be protected by the Marketing Act provided it has achieved a position on the marketplace.

Storylines

An effort to extend the protection for artistic creations can serve as another example of actions undertaken in the administrative arena to expand the scope of what can be regarded as property. A patent application on a storyline was submitted in November 2003, and has now been published by the U.S. Patent and Trademark Office⁵⁸. Advocates of the patentability of storylines argue that methods of performing and displaying fictional stories (as motion pictures, novels, television shows, commercials etc.) should be placed on a par with computer software and business methods. The rights-holder will if the patent were to be granted, be issued reliable protection through the U.S. Patent Act.⁵⁹ The applicant, inventor and patent attorney, Andrew Knight, claims that there is no reason why artistic inventions should not be considered patentable subject matter. He proposes that when a movie has implemented a unique plot, this is not merely an expression of an idea, but a practical application (when an abstract idea is put into practical application or use it is generally considered patentable subject matter). A new plot is therefore an invention. Knight dismisses any apprehension regarding an increase of infringement litigations and creation of monopolies by referring to the novelty and non-obviousness criteria. He means that there are no incentives for artistic inventors to create due to the poor protection offered through copyright, which will impair the nation's creative reputation.

"A patent system that sanctions and defends patents on artistic inventions, such as new and non-obvious plots, will spur an array of never-seen-before, never-experienced-before, intellectually inspiring forms of entertainment. A patent system that lethargically clings to an as-of-yet unarticulated rule that artistic inventions are not patentable subject matter because they are not closely enough related to a

⁵⁸ To be granted, it must fulfill the US Patent Act requirements of utility, novelty and non-obviousness. According to inventor Andrew Knight (patent attorney), the utility requirement deals with whether an invention falls within statutory subject matter, while novelty and non-obviousness address whether the invention is identical to or inadmissibly similar to previous inventions. Since the Swedish Patent Act requires "technical function", a similar action in Sweden would probably not be successful.

⁵⁹ <http://www.emediawire.com/releases/2005/11/emw303435.htm> (collected 2006-01-13)

mechanical gear or an electronic integrated circuit will guarantee our nation the same repertoire of mind numbing movies and dime-a-dozen boy bands.”⁶⁰

This is an example on how Knight tries to apply property concepts on intellectual assets by communicating on the administrative arena to expand the scope of protected subject matter.

Business methods

TV-formats, have as mentioned, not yet been awarded copyright protection in Europe and this is due to the view that such formats constitute mere ideas as opposed to creative works and to the perception that copyright protection could give rise to unlimited monopolies. We believe that a comparison between TV-formats and business methods is relevant since one could argue that a business method also constitutes a collection of ideas. Business methods are awarded protection through patent law in the U.S., but not in Europe. Case history⁶¹ on the application of U.S. legislation to the patentability of both software and business method inventions shows the basis for the decision to hold these as patentable to be the American principle of allowing patents on anything that is “new and useful”⁶². In Europe on the other hand, the patentability requirement stipulates that the effect must be technical, pure methods of doing business which are arguably patentable in the United States, will still be regarded as non-patentable according to the European Patent Convention.

However, with the rise of e-commerce, it has become more difficult to define the boundary between “technical” and “non-technical”. This in turn has led to an increase in the number of software patents and business method patents in Europe. Though they may not all be legally enforceable, over 30,000 patents on software have been granted up to this date by the EPO. Legal uncertainty will remain until a clear and concise directive is put into force. It is thus more risky compared to filing a patent with the USPTO to patent a business method and software patent in Europe due to the uncertainty whether the patent will hold in court.

As previously mentioned, the value of the IA has nothing to do with the reel, disc or piece of paper it is manifested in or on, but with the property rights associated with the assets. If the legal area is uncertain, it becomes even more relevant to try to predict how the claims will be met in the business and administrative arenas and to create structures that have the possibility to sustain in the judicial arena.

3.3.4 Enabling collateralization through property construction

From a value creation perspective, intellectual property should be exploited to its fullest, since intellectual property can leverage and constitute the capital assets of a company. Patents can be used as collateral and securities today as they have been awarded the full status of property with the stability that entails; legally, economically and socially. From the CIs’ perspective, copyrights are not considered as being imbued with the same stability as patents – their lack of stability means that they are rarely viewed as an acceptable basis for security for loans. The uncertainty regarding whether a claimed security in an intellectual property will be validated in the judicial arena affects this possibility for value creation. If a creditor cannot be certain that the security will be respected in a bankruptcy situation, she will accordingly be more reluctant to issue a loan, thus negatively impacting new ventures depending on intellectual creations as means of generating initial funding. If the conversion of intellectual creations into securities is strenuous it will be more

⁶⁰<http://appft1.uspto.gov/netacgi/nphParser?Sect1=PTO2&Sect2=HITOFF&p=1&u=%2Fnetacgi%2FPTO%2Fsearch-bool.html&r=1&f=G&l=50&co1=AND&d=PG01&s1=storyline&OS=storyline&RS=storyline> (collected 2006-01-13)

⁶¹ Circuit Federal Appellate Court (CFAC) ruling in the *State street bank & trust v. Signature and financial group Inc.* case on July 23, 1999. The Supreme Court rejected the case.

⁶² 35 U.S.C § 101

difficult to secure loans and venture capital, which consequently can have dampening effects of a nation's economy and reduce effectiveness.

Valuating intellectual assets is another aspect contributing to the reluctance to issue loans and the problems with attracting investments. Intangible assets are not easy to assess in terms of value; it is hard to understand and measure their value since most accounting rules have not acknowledged the fact that intangible assets represent significant value today in the intellectualized economy. The values that can be connected to the more concrete IP among the intangible assets are easiest to determine and measure, while the other kinds of intangibles, know-how, relationships e.g., are more difficult to define and describe.

Naturally, assessment of value is extremely important in the business arena since the value of an intangible asset will often stand as the basis for a decision to invest or not. The economic value of an asset rests largely in the potential for future commercialization.⁶³ According to our interviews, many entrepreneurs lack financial instruments adjusted to an intellectualized economy, which hampers the creation of new ventures, and makes it harder to attract capital. One example comes from the movie industry, where the corporate structures in combination with tax regulations create an unfavourable situation for the investor should the motion picture yield a profit⁶⁴. In this area, the need for up-to-date legislation is acutely apparent.

3.4 Creating value in an intellectual value chain

3.4.1 Intellectual Value Star

Intellectualizing the material value chain creates an intellectual value chain where the end product is based on information, know-how and intellectual property. The focus lies, as opposed to in a material value chain, on the creation of value when managing parallel actions, rather than on adding value in sequential activities. The intellectual value star will be introduced below.

⁶³ This builds mainly on Petrusson, chapter 5, p 45-52, Patrick H. Sullivan, Value-driven IC: How to Convert Intangible Corporate Assets Into Market Value

⁶⁴ This has to do with tax legislation in regard to "enkla bolag", and was discussed at the Seminar "New means to finance Swedish movies" at Göteborg Film Festival, 2006-01-30, by Tomas Eskilsson (Film i Väst), Christer Nilsson (Göta Film), Sten Johansson (Venture capital company Ekstranda), Steve Aalam (Director)

Figure 1 CIP Intellectual Value Star™



The concept of the Intellectual Value Star™ (IVS) was developed by CIP as a complement to an intellectual value chain to illustrate what activities are important, and in which areas these activities need to be carried out to enable value extraction⁶⁵. We perceive the Intellectual Value Star™ as being a helpful tool in illustrating how an intellectual value chain differs from the value chain where material artifacts are the objects. It is pertinent for entrepreneurs to understand the relevance of knowing which activities need to be carried out in an intellectual value chain, even if they are dealing with the production and sale of material commodities. In order to create a successful venture, activities like claiming IP, building the brand, and creating licensing structures cannot be neglected. These activities cannot be conducted separately, but are instead interdependent. Our intention with using the CIP Intellectual Value Star™ is as mentioned to describe activities necessary for achieving structural control, and further on in the report to demonstrate how these activities correlate with the activities conducted in our case study.

The first leg of the star describes the importance of managing human resources (HR); the second leg is about claiming the IP, registration of trademarks and designs and making contractual property claims. Shaping the innovation is about branding and identification, forecasting, evaluating and designing structural control. Shaping the market concerns issues of how to support an intellectual infrastructure, governing strategic alliances and aligning a business plan with technical development. Shaping the company has to do with awareness and skills in IP management, prognoses and strategies supporting intellectual value creation. The value creation and extraction comes from offering value propositions based on these activities, such as propositions concerning co-branding, product placement and attracting venture capital.

⁶⁵ Petrusson, Intellectual Property and Entrepreneurship, p. 249

3.4.2 Mapping value-creating activities

In our attempt to create a comprehensive overview of activities we believe are relevant in the process of moving from idea to value creation, we have chosen to hybridize the CIP Intellectual Value Star™ with the concepts of intellectual asset/property/capital management. This enables us to separate and define the activities and to add a chronological dimension, despite the non-sequential nature of the intellectual value chain concept. In order to simplify this representation, we have chosen to illustrate value creation as being somewhat chronological in that we have divided the creation and management of IA – IP – IC into three steps: intellectual assets management (IAM) – intellectual property management (IPM) – intellectual property management (ICM). In reality, the lines between them are not as clear-cut as we portray them, but this will facilitate the application of the model onto the LazyTown® case later on in our analysis. We have chosen to redefine Petrusson’s concepts to some extent in regard to the description of IAM, IPM and ICM, in order for them to be more suitable for our purposes.

Figure 2 Value creation map

	IAM	IPM	ICM
Claiming IP	<ul style="list-style-type: none"> - Prioritizing and defining what is a company asset - Secrecy activities and contractual property claims - Title clearance 	<ul style="list-style-type: none"> - Claiming and applying for IPRs 	<ul style="list-style-type: none"> - Maintenance and surveillance - Governance of infringements / conflicts
Managing HR	<ul style="list-style-type: none"> - Evaluating need for external competence 	<ul style="list-style-type: none"> - Creating contractual arrangements 	<ul style="list-style-type: none"> - Establish loyalty and incentive structures
Shaping the innovation	<ul style="list-style-type: none"> - Evaluating and forecasting customer reception - Designing assets to suit the market 	<ul style="list-style-type: none"> - Packaging assets by property concepts 	<ul style="list-style-type: none"> - Building the brand by communicating brand values
Shaping the market	<ul style="list-style-type: none"> - Aligning product development with new technology - Governing market mechanisms 		<ul style="list-style-type: none"> - Creating a network of licenses, sales and other commercial transactions - Governing strategic alliances, co-branding etc.
Shaping the company	<ul style="list-style-type: none"> - Establishing a firm - Implementing visions and strategies supporting intellectual value creation in business plan 	<ul style="list-style-type: none"> - Management of intellectual property permeates organization 	<ul style="list-style-type: none"> - Continuous creation of value propositions - Attracting additional venture capital

Intellectual Asset Management

This first step describes concrete actions to take on the path from idea to IP in order to secure rights to the creation, gain structural control and avoid legal uncertainties. In a more technical setting, the word invention would unquestionable refer to a new technical solution. In our setting the invented “thing”, refers instead to the intellectual creation on a more general level. The primary assets in this stage are therefore the human capital, i.e. information, know-how, and the creation itself, not yet packaged into a rights construction. At this stage, the intellectual phenomenon should, if possible, be identified to later on be captured in a property right construction.

Intellectual Property Management

At this stage of the process, the main activity is claiming ownership and creating contractual structures. In order to do that successfully and mitigate risks, the first step is to ensure title clearance and objectify the assets by packaging them into property constructions, which makes the assets more attractive from an investor perspective.

Intellectual Capital Management

At this stage, IP should be used strategically in order to create additional value. As IC, the IP can be used both as objects in a financial context, e.g. constitute collaterals, and as value propositions e.g. licensing schemes. Activities upholding the continuous creation of value propositions co-exist with defensive actions in order to govern and maintain the IP in this phase. The value creation permeates all levels, and is a continuous process.

4. LAZYTOWN® CASE STUDY: VALUE CREATION IN THE CIs

In this chapter, we aim to examine the activities pursued in the LazyTown case. In relation to the activities, we will analyze why the different activities were conducted, in what stage of IAM/IPM/ICM they belong, and how it relates to value creation, in accordance with Value Creation_Map.

*“Most ideas take 7-9 years before they start to fly. If quicker, it is something spooky about it.”
-Magnus Schéving, founder of LazyTown®*

4.1 Prologue

By applying “Value Creation Map” on the activities that ought to be taken to maximize the value of intellectual assets according to the IVS presented in the ICM-chapter, we aim to analyze the different activities in the LazyTown® case. Has Schéving taken all the “spikes” in the IVS into consideration when creating his venture? The activities in the different spikes (claiming IP, managing HR, shaping the innovation, shaping the market, shaping the company) will be elaborated in connection to the different levels (IAM- IPM-ICM) in the figure presented in chapter above, in regard to where in time they become most relevant.

The purpose is to show how actions can help leveraging a venture and create better opportunities to create sustainable value in an authentic case.

4.2 Background⁶⁶

LazyTown® is a children’s program originating from Iceland. Creator of the program is Magnus Schéving, a world-class athlete, entrepreneur, writer and producer. Magnus Schéving managed to collaborate with Nickelodeon’s Nick Jr. Channel, and the first episodes were broadcasted on August 16, 2004. The show is now the forth-ranked pre-school show on U.S. commercial TV and airs in 49 countries⁶⁷. The highly advanced production facilities are located outside Reykjavik in Iceland, where the script writing, production, make-up, image data processing, editing, music and sound composition, recording, post production and deliverance of the LazyTown® TV show, take place under one roof. The creator himself is involved in art design, script/song writing, directing and editing; i.e. most of the creative activities related to the production of the show. Finally, Schéving is also acting the character Sportacus®.

LazyTown® is about Stephanie who comes to LazyTown® and meets its somewhat crazy inhabitants, among others, lazy Robbie Rotten®. The town is watched over by super-hero Sportacus®. Stephanie is trying to get a grip over the lives of her new friends, and each friend is supposed to symbolize the challenges and opportunities that kids are faced with in everyday life. Stephanie’s task is to navigate between making healthy choices and choosing the easy way out.

Increased health is namely the overall aim for the LazyTown® concept. By inspiring and leading by example, the show is supposed to help kids to adopt healthy messages through entertainment. While experiencing joy the kids will learn the message of the metaphorical guides the show provides.

⁶⁶ www.LazyTown.com

⁶⁷ <http://kidstvmovies.about.com/od/LazyTown/a/magnusbio.htm> (collected 2006-01-29)

4.3 Intellectual assets management

4.3.1 Establishing the firm

Magnus Schéving's⁶⁸ first creation was a book about LazyTown®, *Go Go LazyTown*, published in 1995. From the very beginning, Schéving had the vision of pursuing the goal to establish LazyTown® as the big project it has become today. Since the book was written, a business with over 100 employees has developed. Schéving is of the opinion that the building of the company is the biggest and hardest task when realizing a project like LazyTown®, as not all creators know how to run a business based on their idea. Schéving's advise to entrepreneurs who are thinking of pursuing a creative project, who knows from the beginning exactly where they want to go, is not to forget the importance of learning as much as possible. *"Talk to mentors or people that you trust and go and ask some people around; - How have you done it before? Try to document it, go to school or try to learn a little bit about it. How is it done, what do I have, and what kind of boxes do I need to fill?"*

In the case of building up a company based on his idea, Schéving found great help in Reykjavik based IP lawyer Thomas Þórvaldsson, who got into the picture at a rather early stage. His first task was to partake in the establishment of the company, and build up structures that would enable future expansion. Their choice was to establish a Limited company; thereby it was possible to, in exchange for convertibles, obtain investment at an early stage. According to the investors we interviewed, it is common to withhold investment until there is an established firm with documented turnover. The establishment of the limited company thereby became a tool to attract investment, and was perceived by the investors as evidence of Schéving's competence as an entrepreneur - not only was the idea reliable, the company further added to the perception that the plan was well prepared.

As the contributions in a production in the CIs can be multiple, an established firm can constitute a mean to achieve control – if all rights are assignable to the company. In the U.S., it is common for to require a warrant from the contributors that the company owns all rights and can exploit them. This can also be valuable information for investors in order to know that all rights are cleared. The scope of the assignments is however restricted by moral rights as well as by limitations on the extension of right to alter works.

In order to facilitate commercialization of a creation, structures in form of a company is recommendable. The firm as a an intellectual creation generates consequential beliefs on the three arenas: it is perceived as an legal entity with all that entails in respect to tax legislation, financial capital and legal responsibilities, and the firm is considered and trusted as an entity in which value can be created. Trustworthiness increases since all business partners act under the same premises, which increases understanding and predictability.

4.3.2 Creating a business plan

Schéving likes to refer to his business plan as a "road map", illustrating not only the goal, but also more importantly the 'road' to reach the goal. By setting up milestones, he was able to present to himself as well as to investors, associates and employees exactly what needed to be done. Schéving realized that it was not the TV show as such, which would generate income. It was instead other areas, which in the past would have been referred to as the after market. According to the investors, they were too aware of this harsh economic reality. Therefore, they found it highly valuable to get a comprehension of how Schéving viewed the potential for additional sources for profit. The matrix below demonstrates the different means (except

⁶⁸ Interview conducted with Magnus Schéving 2006-01-26 and Thomas Thorvaldsson 2006-01-25.

sporting goods) of value creation Schéving found that had already been used in various other TV programs for children.

Figure 3 Mapping exploitation windows⁶⁹



When demonstrating the matrix to us, Schéving explained that he used it in order to map all the possible and previously used exploitation windows for in this case, a children’s TV-show. His strategy was then to try to cover as many of the ‘boxes’ as possible.⁷⁰ These means were of course part of the value creation strategy for the LazyTown® presented in the road map.

Schéving’s advise to an entrepreneur who is thinking of pursuing a creative project, who from the beginning know exactly where they want to go, is not to forget the importance of learning as much as possible. *“Talk to mentors or people that you trust and go and ask some people around; - How have you done it before? Try to document it, go to school or try to learn a little bit about it. How is it done, what do I have, and what kind of boxes do I need to fill?”*

In the case of creating a business plan, it can be difficult to assess the potential for profit. Schéving traveled to different trade show around the world in order to learn about the industry. Evidently, the people he approached were not hesitant to share information; they were actually surprised to find that Icelandic people had television sets, and did not perceive Schéving as a potential competitor.

Schéving wanted the concept to be as neutral as possible so it would appeal to various viewers in different countries, and in order to explain the possibilities for his concept he performed a comparative study with Pokémon. He also had an IPR strategy included in the business plan. This presentation impressed the investors, they rather invest in more developed ideas and the entrepreneur has to be able to provide answers to prove that he has considered risks, both legal, market and financial. Hence, the business plan functions as means to package the idea and to communicate its value in order to attract supportive financing; a more developed idea enhances the value, which in turn strengthens the bargaining position in a negotiation. The business plan was also very well adapted to the new prerequisites in the industry, where it no longer is sufficient with a mere idea for a movie or a TV-series, as such productions are in most cases not profitable in and of themselves.

⁶⁹ www.LazyTown.com

⁷⁰ According to interviews with Schéving and Thorvaldsson.

4.3.3 Defining and securing assets

In the LazyTown® case, we found out that Schéving himself played an important role - mainly for his entrepreneurial skills. His ideas, knowledge, intelligence and imagination all constitute the company's intangible assets. As these assets are the most valuable in a business in the CIs, in fact serve as the whole foundation of the company, it is important to understand how to build property constructions around these intangible assets. By differentiating and identifying intellectual creations such as names, logos, music, stage design, scripts and so on which come into existence when creating e.g. a film or a TV-format, it is possible to claim and package the intellectual creations and turn it into property.

As the creator only has her intellectual creation as collateral in a negotiation with for instance a production company, it is important to build a structure for future packaging and protection. It also has important implications for the communication with investors to demonstrate whether the assets can be protected, and in that case, how. If the creators do not have any patents or trademarks etc, they can instead look at alternative means for protection such as trade secrets act, which offers protection for certain types of information or competition law, which can provide protection for know-how. Thórvaldsson always advises his clients to look at the IP as property equivalent of a house e.g. since it really should be considered and handled as property of the same status.

4.3.4 Evaluating need for external sources

Schéving puts a lot of emphasis on the aspect of finding the right people for different posts in the company - *"this is a struggle everyday"*. Finding the right people is important in order to show other people the high ambitions and competence of the company, but it is not always possible to show e.g. investors the best names in every position.

"So what you do is like when you drive a car from one place to another and normally it takes 4 hours. Then you get other people to drive the car, you then need to tell the investors that you are going to slow down. It will take 5h instead, because the person who takes over is not necessarily the best driver, he is still learning because he does not know as much [about how to develop the idea and building a venture]. No investors want to hear this."

Concerning the human resources, Schéving explicitly pushed the advice on having an attorney involved at an early stage. Even though this of course would constitute a big cost in the books, it is really an investment as many pitfalls can be avoided. An attorney oriented in the business is not only useful to provide legal advice, but can also become a partner in the project.

An important element when Schéving introduced his business plan to the investors was the fact that legal aid was considered a priority to the firm. Not only had Thórvaldsson been involved in the project from an early stage, but he had also engaged a lawyer representing him in the U.S.

As the business grows, the workload as well as the complexity will increase and the time will come when assistance from external sources and employees is unavoidable. What can I manage by myself? Do I need assistance from anyone? When establishing a company and the venture is taking off, of course there are many activities concerning the business the creator can handle by herself. Schéving did involve a lawyer at an early stage even though such services are a substantial expense. However, hopefully many pitfalls can be avoided by hiring such expertise and it should therefore be seen as an investment. The lawyer he chose practices IP law, and represents actors from the music industry. The mission of the lawyer was however not only to handle the matters regarding intellectual property but also to give advice on matters having to do with the establishment of the company, which requires knowledge about corporate law as well. An attorney oriented in the business can not only provide legal advice, but also become a valuable partner when realizing the venture.

4.3.5 Secrecy activities and contractual property claims

The conducted interviews with entrepreneurs⁷¹ revealed that there are problems with handling ideas, as they can easily be stolen. As the innovative process in terms of creating works etc. does start with an idea phase, it is important to keep in mind that ideas cannot be formally protected⁷². As a consequence ideas are vulnerable to infringement in terms of misappropriation and plagiarism. Non-disclosure agreements (NDAs) constitute a means for securing ideas in situations where the idea has to be disclosed for instance when the entrepreneur is in contact with investors or production companies. Due to the lack of knowledge in regard to how to protect her idea, the entrepreneur can be in a disadvantageous position vis-à-vis the production company⁷³. In these situations she has no security concerning her right to the idea; it could simply be stolen by the stronger party.

Theoretically, this type of situation could be handled by using contractual solutions such as secrecy agreements. If no NDAs are signed when the entrepreneur is presenting her idea, she might very well risk to leave the negotiation room not only without a deal, but may later on see her idea being realized by the other party. This behaviour is however probably stifled by the word of mouth phenomenon since the competition is fierce among the production companies, and they would want to avoid the bad will dishonest activities entail.

The purposes for entrepreneurs in the CIs of having NDAs are e.g. to prevent diffusion of IP and enables holding individuals and companies legally responsible in court for breaching the NDAs. An advantage with using a NDA is that it is a very useful tool in the event of a future dispute, where the parties can prove to what they have agreed. The problem is however the difficulties to, at an initial stage in cooperation, be able to foresee future events as well as being able to thoroughly describe the outcome of the project – it might not be certain that the project is completed at all. This further emphasizes the benefits with having a thought through plan for the concept.

One of the interviewees⁷⁴ means that a system with a “mandatory” signing of NDAs would be difficult to uphold in practise since information that is already in the public domain can never be subjected to confidentiality agreement, and in an initial phase the idea might be rather undefined and general to its character.

Thórvaldsson stresses the importance of always using NDAs and in the case with LazyTown® where the concept have been very well-defined from the beginning it has not been that problematic.

4.3.6 Title clearance⁷⁵

Title clearance is an important tool by which the creator enables structural control in two important aspects. As mentioned, there may be several contributors to a project of this magnitude, and therefore different people will be obtaining the economic and moral rights to the different creations. A web site is an example of a creation process involving many creators. One company may own rights in the navigation software, others may own copyright in photographs and text and another may own the design right to icons on the site. It is always important to establish who owns what and what how the content can be used.

⁷¹ Näslund and Schéving, both pointed out this issue.

⁷² The Copyright Act does only protect the form of the objects, but not underlying *idea* to the object.

⁷³ Interview with Sebastian Näslund

⁷⁴ Sveriges Television = Swedish National Television

⁷⁵ Petrusson refers to this as ‘degunkification’, which is an entrepreneurial skill. The degunkification process is about “deconstructing” a project/business, and accordingly, perform title clearance to sort out the relations and claims people/companies may have to a work.

When it became clear that the LazyTown®-project was going to take off, Magnus Schéving and his legal attorney Thomas Thórvaldsson started out by conducting a title clearance. Concerning title clearance, Schéving's strategy has been to make sure that all rights to creations contributed by other creators have been assigned to the company. These activities are important because the actors need to clarify different claims to ownership, control, licenses, remuneration other people/companies might have. The point of these actions is to eliminate existing or potential uncertainties regarding title issues as such could constitute obstacles for future successful entrepreneurial activities.⁷⁶

The second aspect concerns the IP strategy. Schéving and Thórvaldsson engaged firms in the U.S. to perform searches for already existing trademarks etc. in order to evaluate if the suggested name could be registered, thereby building up a base for how and where the registration could be done, and to avoid infringing someone else's property. Therefore, they conducted prior art searches, to check registered names as well as applications, and a common law search in addition to check telephone books and company names.

4.3.7 Evaluating and designing the innovation

Evaluating the intellectual assets should be conducted at this stage of the process. As the idea constitutes the most important value in a creative project, the evaluation has to be performed in order to determine whether to go on with the idea. The human capital can of course also be evaluated. Do we have the know-how needed in order to carry out this project? When shaping the "innovation" Schéving started out by conducting research regarding the potential market. One activity particularly interesting was that, not only did he read about the market and study statistics, Schéving also made sure to get acquainted with his potential audience by meeting over 400 kids. He put up theatrical performances and tried the concept on the kids in order to find out what they found amusing.

In order for a company to be successful, it is evident that it must have customers' appreciating the company's products. By doing this he was able to evaluate and forecasting the customer's reception of his concept as well as tailoring the show in accordance with his findings. Another thing that Schéving did that perhaps is not obvious to everybody, is that he choose to make the show as "neutral" as possible in terms of cultural aspects. By taking this decision, he shaped to innovation to fit as many potential markets as possible. It is not uncommon that e.g. children's shows includes features, it could be a yellow school bus or a tea-party, that reflects its country of origin but perhaps does not appeal to all kids as they cannot relate to, or understand the meaning.

If these activities are conducted, the creator could more easily offer value propositions that are better adapted to the specific market and the customers' needs.

4.3.8 Considering market mechanisms

There are many good ideas, and there is of course great potential for success if the conditions are right. In the LazyTown® project, the timing issue was what hampered the idea from the beginning; even if the idea was good it did not matter, as the timing was not right when Schéving started out. It was not until during the recent years that the market was ready for this kind of concept, namely to adopt the message about healthy living. Now on the other hand, the timing is just right since the number of children suffering overweight problems is increasing.

At this stage, it is also important to bear the impact of new technology in mind and aligning it with the forecast for the venture. In the CIs, where the distribution opportunities have changed due to digitalization, being open-minded to these new possibilities can help ventures to achieve long-term growth.

⁷⁶ Petrusson, p. 161

In Schéving's case, he has considered the advantages the new technology brings, in his business plan, thereby becoming more attractive to investors.

4.3.9 Obtaining investments

Producing a show of this magnitude is for evident reasons expensive. Attracting capital was one of the most important factors in order to realize this dream of Schéving's, and as for most entrepreneurs within this industry, it was a difficult task. After lots of persuasion, Schéving gradually managed to attract enough capital to enable expansion over time. Schéving mentions a dilemma when approaching investors with a new idea.

“Sometimes they want your idea, they need you and want you to stay in the project, but at the same time, they do not necessarily want you to run the company. An issue in this aspect is that the creator, most likely, is the only one who really understands the idea, and an idea can be as hard to explain as the words freedom or humour.”

By presenting the business plan, or the ‘road map’, as Schéving likes to call it, he succeeded in attracting investments. Schéving put up milestones to point out at what stage in the project he would need more money. By showing to the investors that he actually succeeded in reaching the first milestones, Schéving managed to instill a feeling of trust among the investors for the knowledgeable and carefully prepared presentation of his idea.

The investors who believed in the idea from the early start did also stress the importance of the perception of the individual when deciding on whether to invest in a company beside the business plan since it is important to get a feeling of trust for the person. It is a common problem that inventors looking for finance to start a business do not have the drive to pursue the project and invested money goes to waste. *“The alternative option is to find a clever driver who can drive it faster than you; maybe you can't, because there is nobody. But if there is; that person will know it and she is going to take 15% of the company anyways. Therefore, what you do is that you can either hire the best guy in the world and you put that into your business plan, expensive but part of the plan. Another option is to teach, get the investor to understand that this is going to take time. Most ideas are 7-9 years before they start to fly. If quicker, it is something spooky about it.”*

The interviews indicate that investors have a hard time understanding the value of intangible assets, while at the same time the creators cannot communicate the value. This further emphasizes the need for a business plan that can illustrate how the profit will accrue.

4.4 Intellectual Property management

4.4.1 Objectification

At this stage, the activities should be supporting the construction of property. The purpose is to capture and realize the values of the intellectual assets in order to make them more defined when communicating with investors, potential business partners e.g., as the value of an intangible asset to a large part stems from the property right status associated with the asset. By registering a trademark, you communicate that the intangible assets should be perceived as an intellectual property and that an unlawful use would be considered as a violation of property rights.

What activities are needed in order to turn intellectual assets into property? The insufficient protection for ideas creates a need to objectify the idea, facilitating the understanding of which legal tools are relevant and useful.

4.4.2 Claiming and applying for IPRs

The book Schéving first produced is copyright protected from the day of creation, and the main rule is that copyright protection expires 70 years after the creator's year of death. A copyright protection does however not protect the name of the book to a satisfying extent why the trademark protection can be helpful in this aspect. Magnus Schéving and his legal attorney Thomas Thórvaldsson investigated the potential to register some of the names. As all costs are hard to bear in the beginning of a project, it was not possible to carry out a complete claiming process at this stage.

Prior to introducing a trademark to the company's potential customers, it, as previously mentioned is particularly important to perform a title clearance. By pursuing such actions at an initial stage, one can avoid having to abandon a brand that is already in use and on its way to become established. When registering the trademark it is limited to certain ranges of goods and/or services: classes. The cost depends partly of the number of classes you choose to register. You also have to be wary of other people's use of similar brands but for other classes, as they may conflict.

For Schéving the most important was of course to claim the main brand "LazyTown®"; however, names of some of the characters in the story also became priorities, as they were essential in order to build a foundation for further exploitation in terms of merchandize. Schéving and his lawyer conducted these actions early in the process. When filing the application for registering LazyTown®, another company named 'Lazyboy' opposed and claimed the names were too similar. Instead of bringing the disagreement to court, which would have implied dispute in 17 countries, they chose to settle the dispute amicably outside the court by establishing a co-existence agreement.

Since this was not only a national project, it was important to define the prospecting markets in order to make proper claims concerning where to register. Schéving started out with the American market, which, as his lawyer pointed out is "a good platform for world dominance". They started with registering LazyTown® and Spartacus®, in a limited number of classes due to lack of money. At a later stage, in 2002, they registered 40 additional categories. Due to the cost aspect, and the need to avoid clashes of that kind, it can be wise not to register all goods and services from the get go. This must however be reviewed regularly as time goes by and the business expand.⁷⁷

As copyright protection does not require registration procedures, these kinds of works are protected automatically as they are created, however, since copyright can be registered in the U.S., Thórvaldsson has registered the characters, scripts, and shows at the USPTO for additional protection.

The trademark strategy was an important factor for the investors when deciding on whether to support the project or not, they wanted to be sure that the name could be used on an international arena.

4.4.3 Contractual structures

A production of a movie or TV-format involves numerous situations, which ought to be handled contractually. Firstly, any such production involves a large staff, therefore clear and well-drafted employment contract are essential. The ownership to IP developed by an employee in the course of duty is with the exception of patents and computer programs not regulated by law. Normally, you turn to standard agreements or customary practices in the business when determining whether the right of disposal should be transferred to the employer. In the film, publishing, advertising industries etc. there are as previously mentioned agreements stating how the multitude of rights should be handled. If no guideline can be found, the employment contract will serve to determine the scope to how rights are to be

⁷⁷ Application tactics, John J Gray, p. 50, A handbook of intellectual property management (ed) Adam Jolly & Jeremy Philpott

transferred, which stresses the importance of drafting thought-through employment contracts. The right of disposal can in some cases be transferred automatically to the employer, if it is part of the employees' duties to create the work. Important to remember is that since companies in the CI are dependent on information and ideas to be secret, it is crucial to include non-competition clauses in the employment contracts. To ensure that employees do not bring intellectual property with them when leaving the company, the employment agreements must contain certain elements to minimize the risk of proprietary information getting in competitors' hands, protect the company's trade secrets and avoid new competitors popping up started by former employees. This actually occurred in September 2004, when the creator of "X Factor" was accused for copyright infringement in terms of several background elements such as music, structure and lightning of the "Pop Idol" format. This dispute featured non-copyright aspects as well. "Pop Idol" staff was due to non-competition clauses in their employment contracts prohibited to work at rival shows, but some still participated in the production of X Factor. Hence, the claims were about breach of copyright as well as for breach of contract. However, the issue was resolved amicable in 2005.

Assignments of IPRs have not been regulated to any large extent by the legislator, and due to the limited court cases, the agreements as such will have to serve as the foundation when determining disputes. It is therefore critical that agreements concerning IPRs are drafted in a way that lessens the risk for disputes. The agreements should be negotiated thoroughly so that all parties are fully aware of the consequences if a bankruptcy should occur for example. However, there is another dimension to using the agreement as a tool to achieve control of future events. It can also be used as a means to prescribe experiences that will be endorsed by the parties and therefore assessed by the court. If you have the skills to predict the intellectual construction process, it is easier to estimate the future value of what is claimed or agreed to in an agreement. Since the regulations in Copyright Act are optional, contracts are commonly used as a tool in order to regulate the relations in the business. Together with IPRs, contracts work as a means to turn intellectual creations into objects and commodities, create markets and thus leverage the original creation to create additional value.

Interestingly enough, we were told that one of the investors only had a verbal agreement with Schéving. Evidently, Schéving managed to give a credible impression, since the investor felt satisfied with a handshake on how the specifics with the conversion of shares would be solved. Unfortunately, when the shares later on were to be converted, the parties could not agree to the terms. The issue had to be settled in court, in the favor of the plaintiff. The investor stated that the procedure changed after that incident – now they always require detailed contracts.

Another interesting piece of information is that LazyTown® has no detailed shareholder's agreement. Evidently, Schéving has managed to stay in control of the company. He is free to execute whatever decision he wants, and he and his wife still owns the majority of shares. If you attract a large amount of money from investors, you commonly have to assign shares in exchange, thus giving up the control to a larger extent.

4.5 Intellectual capital management

4.5.1 Maintenance and surveillance of IPRs

At this stage, the holder of the right needs to be observant of eventual infringement. Both in respect to securing that her own rights are not violated, but also to avoid infringing others. Thereby the holder can avoid expensive litigation costs for unintentional infringement, and prevent that the brand is diluted by unwarranted use of others. The costs of maintaining marks and design rights, which are not being used in business, constitute unnecessary costs. Therefore, they should be reviewed on a regular basis.

Schéving has as previously mentioned chosen to solve issues where they have been accused of trademark infringement amicably, in order to avoid costly court proceedings. Nevertheless, they are doing surveillance of other marks and registrations so they can act on possible infringements, to prevent dilution of the valuable brand.

4.5.2 Establishing loyalty and incentive structures

As the staff is an important factor for the success of a venture, incentive structures can be a means to establish loyalty and to make them work harder to achieve certain goals. Schéving uses a system of using belts (green, blue, red etc.) - after accomplishing different steps in the in-house education, the employee's belt is upgraded.

The employees are according to our information very excited to work with a project they believe in, and there evidently has not been any demand for receiving shares in the company, or installing a bonus system with financial reimbursement as incentives. Furthermore, it is not particularly common to get royalty in Iceland. Þórvaldsson stated however that if a world-famous scriptwriter was hired, they could get bonuses or premiums if they do really well.

Schéving views the education of the staff as a strategic measure, both in terms of increased knowledge and increased loyalty, and regards any anxieties about losing them to competitors due to their competence as illogical – it would be worse not to educate them and to have them stay. Instead, he focuses on educating the employees, and has a few loyal employees that have been with him from the start. He is of the view that you can go further with three loyal people than three smart people.

The values connected with the brand must in order to be credible to the consumers also be integrated with the activities within the company sphere, according to Schéving. These activities are also a means for communicating the brand value and demonstrating that they are not only words, but rather something that consistently runs through the company on every level.

4.5.3 Building the brand

Successful marketing demands good brands and a visit at the LazyTown® webpage gives you an idea about the strategy behind the branding. The thought through branding strategy clearly communicates what the brand seeks to deliver in terms of intrinsic values:

“We want [the parents] to understand that we will go the extra mile to make sure that they understand we are not just selling a product, that LazyTown® is a unique, multifaceted and dependable brand and not just a TV show, not just a logo. Everything we should do should send the same message. And that message is reinforced by the quality of the product. When parents buy a LazyTown® product for their child, they too are saying: I care!”⁷⁸

The value of the trademark builds on what kind of feelings and perceptions it conveys to the consumers. Without positive customer perception, a business or trademark is worthless. In addition, as customer relations are essential to create a value for the business and trademark, customer relations become an intangible asset. It is therefore crucial that the company can deliver on its promise to the customers.

The trademark thus becomes a valuable asset to a firm. Franchising is a means to draw advantage from a well-known brand, merchandizing, co-branding and trademark licensing also constitute means to leverage the brand in different business models.⁷⁹ It is important to emphasize the connection between the consumer and the brand value the purchased product conveys, e.g. how you feel when you are wearing a

⁷⁸ www.LazyTown.com (collected 2006-01-29)

⁷⁹ This draws from Petrusson, p. 44

pair of Gucci sneakers.⁸⁰ Petrusson defines the phenomenon as though an intellectual relationship has been created between the firm and the consumer⁸¹.

A part of the IP strategy was to assure that the use of symbols and signs in these products are global - there are no especially Icelandic references in the brand name or in the names of any of the products. This facilitates the establishment of the brand in new markets all over the world. Another important strategic decision was to reject cooperation with Pepsi. Schéving was offered a substantial amount of money for making a deal with the famous soft drink producer, however, although in great need for financial support, Schéving turned them down. His explanation is that cooperating with Pepsi would not agree with the core values LazyTown® is trying to communicate about the importance of healthy lifestyles for children. This proved to be a well-substantiated decision - the goodwill it evoked, at least among the Icelanders, has been invaluable.

4.5.4 Creating value propositions

The meaning of the term merchandising is the commercial exploitation of the reputation of e.g. fictitious characters, celebrities or trademarks and names of well-known companies. The reputation/fame has most likely been achieved by heavy investments in marketing, and can therefore be exploited by the merchandiser, either in her own production, or by licensing the object. The general idea is to benefit from the well-known status of the brand; to exploit the positive image in all ways possible.

The matrix above illustrates various numbers of possibilities for value-creation that LazyTown® has assured to use to their advantage. Their imagination has not failed to identify business openings connected to the TV-show, in fact greater part of the returns are expected from the merchandize-side rather than from the TV-production itself.

The LazyTown® webpage mentions the following merchandize and side-products:

- *Products*

Board games, books, CD's, theater, video

- *Events & Media*

Economy, energy book, Movie Theater, LazyTown® games, radio station, Web

- *Branded Consumer Goods*

Bottled water, bread, cards & stationary, diverse games, footwear, fruits & vegetables, piggy banks, sporting goods, supplements

The well-defined business plan was a means to illustrate the source of revenue for the investors, wherein merchandize constituted the major source. An important milestone according to the interviews was the agreement with Nickelodeon. Schéving has not only managed to license the format to countries all over the world, but also obtained financial support for the production of a new season from Nickelodeon, and located the production to Iceland, which made him keep much of the control of the show. By offering special LazyTown® food for children traveling with Iceland Air, both parties benefit - LazyTown® creates a

⁸⁰ *Din hjärna avslöjar dig*, attention, nr 7 November (no author specified). Coolscan is an interesting project conducted at Caltech, California, where our appreciation of different products (i.e. brands) is measured by brain scanning. When the participants were exposed to different products, their brain activity was observed. Some of the products that increased the blood flow in the brain the most were iPod, Birkin bag (Hèrmes), Eames Plywood Lounge Chair and Perrier water. The final result and analysis will be presented in the book *Cool: Inside the Brain's Hidden Quest for Cool And How It Shapes our Desires, Why We Buy, and Who We Become*

⁸¹ Petrusson, p. 44

new market for their products, and the airline can offer extra service to some of their passengers. For future expansion possibilities, Schéving is currently looking at the opportunities with e-commerce.

4.5.5 Attracting venture capital

When gaining investment it can be problematic to maintain control since investments commonly are granted with shares in the company as return. Schéving means that the trick for the entrepreneur is to give leeway without weakening her position too much. Schéving managed to convince his investors that he is in fact the essence of the company and therefore retained over 50% of the shares. However, at the same time he is aware of the fact that it is the last money that is the most expensive.

“If you need ten million, you get nine and you think you are almost there, but it is the last million that is the hardest to get. The person who comes in with the last money, he is the one who is going to take the most. It is either the first guy or the last guy, so you have to be really careful about that.”

Schéving's advice is a visual demonstration of which activities have been conducted, and what is needed to obtain the goal. Thereby you enable a more effective way to communicate in regard to the intangible assets, and can also illustrate from which activities the profit will accrue.

4.6 Creating value

When IP constitutes IC it can be used both as an object in a financial machinery e.g. constitute collaterals, the value of the IC occurs in accounting books, and as value propositions in e.g. licensing schemes. Schéving has managed to build a business on his idea, which covers many different markets and a wide variety of products, however, all matching the core values of LazyTown®. The IP is, together with the founder perceived to be the value of the firm, and the company has been high rated. The IP is used to attract investment and to establish lucrative partnerships, and as a solid base to keep looking for alternative ways to explore the idea.

5. CONCLUSIONS

In this chapter, we will conclude how using ICM can maximize the potential of an idea, by packaging assets into property, thereby making them more interesting from an investor perspective. By applying the concept of value construction process on LazyTown®, we will try to pinpoint the success factors as well as the pitfalls.

Investments in the CIs have not reached a satisfying level. As funding is the answer to keeping SMEs proliferating in this cost-intensive sector, and the starting costs are high with these kinds of productions, the creators need to package and communicate their ideas at an early stage. Unfortunately, as we have demonstrated, entrepreneurs have trouble understanding how to package intellectual assets into property constructions, whereas investors on the other hand find it hard to fathom the potential for value, which lies vested with intangibles. The lack of understanding, we believe, emanates from a failure to communicate. The way we see it, the industry needs tools enabling better communication between the creators and the investors. Creativity itself, is not an issue, there are plenty of creative persons out there. Instead, what becomes problematic is the step from merely expressing creativity to create a commercial product.

We are of the opinion that ICM could facilitate the communication process between all actors. In addition, such skills can provide the involved parties with useful tools for evaluating and creating a successful venture. It is important that actors are aware of the legal environment surrounding the ability to protect, govern, structure and control their assets as value mainly comes from property rights associated with the assets. It is especially important for creators to package and protect their creations in these industries, characterized by asymmetry.

Uncertain legislation in the area of IP requires skills in predicting how actors will receive and act upon the claims. Actors who can create their own legal structures, align them to the business model, and understand the mechanisms of the three arenas have an excellent opportunity to succeed. With better functioning business models, adapted to the challenges in the industry, it is possible that the industry would become more attractive to investors. Therefore, it is important to know how to communicate about IP and know how to claim to capitalize on creative efforts by enabling strategic protection and packaging in the digital era.

By using the Value Creation Map once again and combining it with lessons from the LazyTown® case study, we are able to pinpoint the activities that have been vital in securing the success of the venture. When comparing the conducted activities from the case study, we found that the actions largely correspond to the suggested activities in the Intellectual Value Star. Schéving has from the get go realized the importance of managing his intellectual assets. He has realized their potential, and been able to communicate this potential to external parties. His vision has been very well defined, and the activities have supported the plan all the way. One of the most important keys has been what he refers to as a “road map”. This has been very detailed and specific which have been rewarding in terms of presenting the idea to potential investors. It not only enabled him to demonstrate the sources for revenue, but also to manifest how all his research had been integrated in the plan. As it can be difficult to portray the various possibilities for an intellectual asset at an early stage, it can be helpful to conduct a comparative study, to further concretizing the vision. The investors were duly impressed with the presentation of the business plan, and with his vast knowledge of the industry and the market.

Another vital ingredient has been the IP strategy. With the involvement of a lawyer, they have followed a strategic plan and aligned it to the budget, to protect the most important assets by applying for registration. The IP has served as value creating mechanisms in the continuous expansion of the venture through licensing, merchandizing, goods, and co-operations. The third aspect has been the understanding of the brand as a communication tool. The values of the brand are conveyed to employees, customers and

potential partners. By turning down a multi-national corporation as drinking Pepsi did not go well with the message of healthy living, Schéving gained more goodwill among the Icelandic people, and strengthened the brand.

In conclusion, he has by reaching the level of intellectual capital management, managed to leverage his intellectual assets to intellectual capital, thereby enabling value creation.

Figure 4 Value Creation Map: Applied on LazyTown®

	IAM	IPM	ICM
Claiming IP	<ul style="list-style-type: none"> - Magnus Schéving - Book - Assignment of rights - NDAs 	<ul style="list-style-type: none"> - Copyrights - Trademark - Design rights - Trade secrets - Oppositions concerning trademark - Domain names 	<ul style="list-style-type: none"> - Annual IPR overviews - Settled disputes amicably - Watched out for infringers
Managing HR	<ul style="list-style-type: none"> - Lawyer - Accountant - Financial advisor 	<ul style="list-style-type: none"> - Consulting agreement - Employment contracts - Non-competition clauses - NDAs 	<ul style="list-style-type: none"> - A system of using belts as incentives - Established loyalty among the employees
Shaping the innovation	<ul style="list-style-type: none"> - Schéving met with 400 children prior to producing the show. What do children like? - Tailoring the show to suit as many markets as possible 	<ul style="list-style-type: none"> - Evaluated the possibilities for protection early on and used it in BP to attract investment 	<ul style="list-style-type: none"> - Brand value crucial - Rejected cooperation with Pepsi
Shaping the market	<ul style="list-style-type: none"> - Considered what can be sold on the Internet - Demand for “healthy living” high - Low supply of TV series with the same message - Comparative study: Pokémon 	<ul style="list-style-type: none"> - Handles TV-format as property 	<ul style="list-style-type: none"> - Licensing out format - Merchandizing - Shoes - Clothing - Food - Competitions - Co-branding with Iceland air
Shaping the company	<ul style="list-style-type: none"> - Establishing a firm/ Ltd company - Business Plan/ ”Road map” - Visions and Strategies - Shareholder’s agreement 	<ul style="list-style-type: none"> - The management of IP has been considered a core activity 	<ul style="list-style-type: none"> - Attracted venture capital from public funds, banks and private investors

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Sebastian Näslund, independent filmmaker
Jonas Egnell, L.L.M. Negotiator at SVT
Magnus Schéving, Creator of LazyTown
Tomas Thórvaldsson, L.L.M. representing Schéving.
Jóhann Jóhannsson, investor at Iceland Bank
Björgvinn, investor at New Business Venture Fund

Attended Seminars

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