WPI Venture Forum
Worcester Polytechnic Institute
Alumni Association
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WPI Venture Forum Calendar of Events

Tuesday, September 15, 1998
Tuesday, October 20, 1998
Tuesday, November 17, 1998
Tuesday, December 15, 1998

All meetings in Kinnicutt Hall, Salisbury Labs (our usual location).

For a recorded announcement of the next program or to receive future mailings, call (508) 831-5821.

Directions to WPI Campus, Salisbury Labs, Room 115

From the East—Take Massachusetts Turnpike (I-90) to Exit 11A (I-495). Proceed north to I-290, then west into Worcester. Take Exit 18, turn right at end of ramp, then take an immediate right before the next traffic light. At the next light, proceed straight through, bearing right onto Salisbury Street. At the WPI sign, turn left onto Boynton Street. Parking will be on your right, behind Gordon Library. Salisbury Labs is up the hill across from the Library.

From the North—Take I-495 south to I-290. Follow directions as from the east.

From the South and West—Take Massachusetts Turnpike (I-90) to Exit 10 (Auburn). Proceed east on I-290 into Worcester. Take Exit 17, turn left at end of ramp, follow Route 9 west through Lincoln Square, straight onto Highland Street. Turn right onto Boynton Street. After crossing Institute Road, parking will be on your left, behind Gordon Library. Salisbury Labs is up the hill across from the Library.

THE WPI VENTURE FORUM

Promoting and serving technology-based entrepreneurial activity
www.wpiventureforum.org

Volume 7 No. 10
June 1998

Business Plan Writing and Contest Winner

A look at the upcoming meeting

Tuesday, June 9, 1998
WPI Campus, Salisbury Labs
Registration: 6:00pm
Meeting Begins: 6:30pm
Admission Fee: $7.00

Business Plans: So much to do...so little time.

What's all the business plan hoopla about? You've got your idea. You've run the numbers. You've even done some market research. You know who your competition is. Why won't THEY just give you the money so you can start producing and make everyone rich??? It's that "Do you have a business plan?" question or "Just send me your business plan and I'll get back to you" response, again and again. A dead end? Certainly not.

Most successful entrepreneurs and investors agree on one thing: a good business plan - written, presented and used in the right way, can make a profound difference in the success of a start-up business. Whether you are going to seek investors or not, creating your plan, using your plan, and reviewing and revising the plan often and when necessary, helps you to focus your business, present your ideas, and use your time effectively and efficiently.

In addition to announcing the winner and presenting the business plan of the Forum's 6th Annual Business Plan contest, our June meeting will focus on your business plan: writing it, presenting it, and using it as a tool in your business. We are fortunate to have a panel of speakers with great expertise in business plans.

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Writing the Plan

Our first speaker will be Daniel Roach, Director of High Technology Services at Coopers & Lybrand L.L.P., Boston, MA. Dan joined Coopers in 1991 and works with a wide variety of companies - start-ups through publicly traded. In his capacity as Director of High Tech Services, Dan and his team regularly provide clients with complimentary review of business plans, consultation on financing strategies, quality improvement methodologies, and growth strategies and support, in addition to the more traditional tax, accounting, consulting, information technology and audit services that Coopers & Lybrand has available. Dan will discuss the basics of what to include in the business plan.

Presenting the Plan

Marcia Priestley, President of Priestley Communications, Inc., located in Boylston, MA, will be our second speaker of the evening. Marcia will focus on something often forgotten about but which can leaving a lasting impression about you and your business: your presentation, written and oral. In evaluating plans and the potential success of a business, the whole presentation picture must be professional and polished. Marcia will offer important tips on how to make the most in communicating about your business. Marcia has been in the field of communications and journalism for over 15 years. She founded her company to provide writing, editing and communication consulting services to the business community. Her clients include medical, high tech, manufacturing and service companies of all sizes.

Using the Plan

Our third speaker of the evening will be Pamela Raikunen, President of Raikunen Weeks, a division of RW Consulting, Inc., a business operations consulting firm located in Hudson, MA. In her fourth year of operating her own entrepreneurial venture, Pam and her business partner not only "teach" using your business plan, but "practice" it as well. Before founding Raikunen Weeks, Pam was a Senior Partner and Practice Leader for Digital's Business Process Reengineering consulting practice. At Raikunen Weeks, Pam and her team specialize in helping clients clarify strategic and operating goals, set strategic direction, identify required process redesign initiatives, establish goals for competitive advantage, and focus on customer relationships. In short, Pam helps clients to bring their customer's view into their operating practices, decisions, and strategic direction. She is co-author of the article Make Your Business Plan Your Star Employee, among others.

Winner of Business Plan Contest

A portion of our evening will be devoted to award of the $10,000 prize to the winner of the Venture Forum's 6th Annual Business Plan Contest and presentation of the winner's "Winning Business Plan". Some of our Contest judges will be on hand to share their thoughts on what made this plan a winner and as always, the audience will be asked for feedback on the plan winner's presentation. Don't miss this opportunity to do your own evaluation of the winning plan and support budding entrepreneurs! Next year, this presentation could be yours!!! **VF**

See You in September!

VENTURE

The mission of the WPI Venture Forum is to promote and serve technology-based entrepreneurial activity and economic growth in the region by increasing the business and financial knowledge of the participants through sharing experiences with entrepreneurs as well as area business, financial and educational leaders.

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Letter From The Chair

Thanks And See You Next Year!

by Brian Dingman, Chair

This is the last newsletter of the 1997/1998 season of the WPI Venture Forum. I wanted to take this opportunity to leave you with some thoughts regarding our season just ending, and our future, particularly next season.

First and foremost, my personal thanks to each and every volunteer who has devoted his or her precious time to the Venture Forum. As you know from reading past columns of mine, we are blessed to have a large, active group of volunteers comprising our executive committee and our several substantive committees which plan and implement our activities. I can say from personal experience and feedback from innumerable event attendees, that our activities are of the highest quality; the time, effort, and results obtained by the volunteers, is a source of both amazement and pride to me as the chair of the Forum.

Without slighting any of our volunteers not mentioned here by name, my utmost thanks to Nancy McKenna, our newsletter editor. For the past two years, Nancy has been responsible for twenty newsletter issues, each of which has been of the superior quality we have come to expect. Nancy has applied her prodigious talents to the task in a most commendable manner, and has sacrificed innumerable hours of her personal time to ensure that each issue contained relevant, useful business information, and was delivered in a timely fashion to each of our 2700 subscribers. Nancy is stepping down from her editor's chair, and will no longer be editing the newsletter next season. Nancy will be sorely missed. Thanks again, Nancy!

On another topic, you will have seen by now our member enrollment information on the cover sheet of this newsletter. The Venture Forum executive committee decided to implement this low-cost membership as a means to defray our ever-increasing costs of bringing you our activities and events. This decision was reached after much thought and debate. The costs of printing and distributing this newsletter have more than doubled in the past few years. Printing and distribution costs relating to our other activities and events have likewise increased. The $20 annual membership fee was implemented to offset such increased costs. Each member will continue to receive this newsletter at no cost, which in and of itself is worth the membership fee. In addition, members will receive a discount at each Venture Forum event. Such discounts will total much more than the membership fee over the course of the next season. I urge each of you to support the WPI Venture Forum by completing the membership enrollment form, and returning it with your check as soon as possible.

I'll leave you with this thought. By all accounts, the nation's economy is steaming along at a pace not matched in a generation. The entrepreneurial opportunities created by the economy are unparalleled. With increased business comes new business opportunity. Every day, this active economy creates the need for goods and services. Investment capital is being invested at record rates. Those of you with the knowledge, foresight and perseverance to do so, are in the best position in modern days to start or grow your venture. The WPI Venture Forum exists for the sole purpose of helping you to meet your business dreams. Please enroll today as a member in our group and join us next season, beginning on September 15, 1998, to help us fulfill our mission and help you build your venture. See you then!

Brian Dingman is a partner in the Westborough intellectual property law firm Nields, Lemack and Dingman. Brian can be reached at (508) 898-1818, or by email at NLDlaw@aol.com. **VF**

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Sponsor's Corner

Venture Capital Factors

by Robert Creeden, Vice President, Massachusetts Technology Development Corp.

Quite frequently I am asked what a venture capitalist looks for in a deal. While the space in our newsletter doesn't allow me to identify all the questions and areas I examine when evaluating a deal, I can outline some of the major questions in four main areas. In so doing I hope to give you some insight into what an investor is interested in when reading your plan and talking to you about your business.

Management

Probably the most important aspect of any diligence effort is the review of the management team. Who are the key players and what is their experience in this industry? Have they run a company before or do they at least come from the same industry? Does the management team possess the skills to carry out this plan? If not, then what skill sets do we need to hire and how does the original team react to adding more people? Other factors that must be considered relate to the realistic answers to questions regarding the financials, market, competition, ownership, valuation, board of directors and the structure of the deal. Then, the investor must judge how this team will react when the company hits its first speed bump.

Market

We all know the market is critically important. Questions here surround the issue of "what is driving the marketplace?" Is it innovation, technology, price and cost issues or regulation? How does the technology fit into the market and how is the problem being solved today? Does your product introduce new protocols for your market and how much education/time will this take to get adopted? What is the sales strategy? Who is your competition and how do you fare versus your competition in terms of features, price, etc. No matter how many times this is mentioned in presentations or books, understanding the market and how you will sell to that market is still the area that gets the least amount of attention by many companies seeking funds. Finally, what are the barriers to entry, if any?

Technology

Investing in technology-based companies means you must look at the technology itself. Patents are good but they do not guarantee investment. Investors like to understand what is defendable in the marketplace. What will keep you ahead of your competition when the growth occurs and others enter into the market? What are the benefits and features that set you apart from your competitors and how will you keep your leading position? And finally, at what stage of development is the product now and what are the future products?

The Deal

The last factor is the deal itself. How much money are you raising? I would advise you to think of this not only in terms of the first round but also a second or even a third round. You must be able to plan when you will need more money and how much will be needed. (I have learned that one thing is certain in building companies - - you will always need more money than you have projected.) What is the use of proceeds? Don't worry too much about the structure of the deal since this will undoubtedly be dictated by the investor and really shouldn't be of great concern to you anyway.

The issue that everyone looks at is valuation. While we could write a full article on this issue alone, an entrepreneur should seek a fair price but remember that it is better to own a smaller piece of a big pie than a big piece of a small pie. Sometimes entrepreneurs get so hung up on the valuation that they forget that the company can only move forward with gas (money) in the tank. I am not saying to simply settle and just take the lowest number, but don't become unreasonable and hold out for a multiple similar to that of a public company. I think you will find yourself without funds! Work with the investor and remember that you are both after the same goal of building value. Finally, the investor will want to see the exit strategy. Many companies talk of public offerings but not many actually achieve this. Be prepared to tell the investor who would buy your company and why they would buy it.

Control

The other big issue is that of control. Every entrepreneur worries about keeping control of the company. This is really difficult mathematically if you are going to raise any significant amount of funds and shouldn't be your main focus. Investors want you to focus on building the business - not hoarding the control. I believe that no matter how many board seats you control, or what your ownership percentage is, control is measured by the top line on your balance sheet – cash. If you have cash and don't need to go to your investors, then you have control. However, if you need cash and must return to your investors for it, then the golden rule of investing applies– "He or she who has the gold -rules!!!"

Bob Creeden is Vice President of Massachusetts Technology Development Corporation (MTDC) in Boston, Massachusetts. MTDC is a venture cpaital firm that focuses on investing in early stage, high tech companies. Bob can be reached at 617-723-4920 or e-mail at rcreeden@mtdc.com. **VF**

Past Meeting Summary

Financing Your Company's Future

by Robert Creeden, Massachusetts Technology Development Corporation

On Tuesday, April 21st, the WPI Venture Forum meeting focused on raising money with speakers Rob Chandra from Commonwealth Capital, Carrie McIndoe from Strategic Capital Resources, Bruce Eger from Fleet Bank and John Hanselman from Active Impulse, Inc.

Mr. Chandra began the evening talking about approaching a venture capitalist. He strongly advised that you must be well prepared and to do your homework. He suggested approaching investors via referral but only after you have made sure that the venture firm invests in your industry segment and stage of company that you are running. He went on to identify four areas that the venture capitalist evaluates - the management team, the strategy from a view of "does it all hang together", the market opportunity and the financial statements. Rob made reference to the over $12 billion invested by venture capital companies in 1997 and stated that most of those funds went to technology-based companies. The process is like getting married because there is a long courtship to really get to know the parties involved and can take up to six weeks before any decision is made. The investment will most likely be preferred stock with the investor taking a board seat and being very active in building the business.

Communication

Carrie McIndoe began her investing career at Kidder Peabody and believes finding money is all about communication. She spends her time with potential investments, helping to put the prospectus together that tells the right story.

Photo by Ron Bouley

(l to r) John Hanselman, Rob Chandra, Carrie McIndoe and Bruce Eger explain raising capital from different sources.

Many entrepreneurs need assistance in restructuring the pitch and she gave the example of her client, Boston Duck Tours. The company originally was selling transportation but repositioned the pitch to entertainment, which was more accurate and interesting. It was then that the company found many investors and has grown significantly. Carrie also recommends doing your homework and says that your overview pitch should be two minutes in length, show no more than 10-15 slides and be able to tell the whole story in 15 minutes.

Banks

Bruce Eger is not your traditional lender. His group at Fleet has products in the $50,000 and $100,000 area and deals with many smaller businesses in central and western Massachusetts. This group of products has developed out of the need by the entrepreneur for a product at this level. Bruce advised building a relationship with your banker as early as you can - just as you do with your investor, lawyer and accountant. In this way the bank will get to know you better. When you come to the bank, be prepared and don't take any of the questions personally. The bank has rules and techniques they must follow in order to complete the loan and maintain its fiduciary responsibility to the depositors. Finally, Mr. Eger recommends picking a bank on more than just the loan. Pick a bank that will understand your business and pick a banker that you can work with over time.

Been There

Our last speaker came from the entrepreneur view, John Hanselman, President of Active Impulse. Mr. Hanselman has raised money from both the private and venture side of the business and recommends retaining counsel to help with the legal issues, focusing your business plan, solidifying your management team and sharpening your pitch as much as you can. In terms of presentations he recommends bringing working models, making sure everyone in your team is present and participates, and keep it low tech (with the reminder that the more complicated it is the more likely it will fail). If the investor does not want to participate, John emphasized that it was important to find out why so that you can learn from the experience and build on it for future presentations and efforts to raise money.

Bob Creeden is Vice President at Massachusetts Technology Development Corporation (MTDC) in Boston, Massachusetts. MTDC is a venture capital firm focusing on investing in early stage, high tech companies. Bob can be reached at 617-723-4920 or by e-mail at rcreeden@mtdc.com. **VF**

Business Planning – Product v. Service Business

by Jean D. Sifleet, Attorney & CPA and Cynthia G. Sechrest, CPA

Carla Smithson finally took some time to strategically assess her business. She had been so caught up in the day-to-day activities that she lost perspective on her business and personal goals.

The planning process has caused Carla to rethink whether the path that she's on is likely to achieve the results that she wants. Carla's business, Smooth Solutions, provides custom solutions for small businesses allowing them to run multiple applications on Windows 95 in a seamless and efficient manner. The client base has grown steadily since the January, 1997 formation of the company. The business has weathered a series of crises including a cash flow crunch, unprofitable projects, unhappy/difficult customers and a big surprise in tax liability. After reflecting on the prior year's intense level of activity and financial results, Carla realizes that she has allowed her business to become too spread out. She's lost focus.

Losing focus and running out of cash are two very common reasons for businesses to fail. Paradoxically, they fuel each other. Lack of cash causes companies to take on work that is outside its focus area in order to bring in some needed cash. Lack of focus causes a company to fail to achieve profitable leverage (repeat business) because the company is competing on too many fronts without a distinctive competitive advantage.

Focus and competitive advantage are critical to success. So, Carla is back to the basics of defining her mission statement, identifying clear and measurable goals, and organizing resources to achieve business goals.

Focus - Mission Statement

Carla's mission statement - to develop custom software for the Windows 95 environment - needs to be further refined. Carla is trying to figure out how she can get repeat business since the custom work is by definition customer-specific and labor intensive. Carla has learned the value of standard interfaces and components and wants to deliver value-added without starting from scratch on each project. Also, Carla has learned that there is real value in the customer's eyes in terms of integrating the systems and applications that are in use in the company.

Carla faces a real dilemma between becoming a product business or remaining a service (custom code) business. To build products or do a high volume of repeat business, her company needs to become specialized in a niche doing an industry specific or focused type of applications (such as retail, or banking or case management). To continue as a service or custom business, her company needs to staff for extensive systems integration and project management.

So, Carla struggles with the question - which direction - to build products or continue to custom project. It becomes clear to Carla that there's a real difference between building products and providing services. She would need to organize and manage her business differently for each type of business.

Competitive Advantage

That brings Carla to the basic question of distinctive competency. Distinctive competency is what becomes a company's sustainable competitive advantage. Competitive advantage is critical to profitability. Carla is really great at writing code to solve business problems. The question is, how can she turn what she does very well into a more profitable business?

Plan

Carla has analyzed the numbers and it's clear that with a service business, she really is capped by the number of billable hours. There are only so many hours in the day. With products, much higher volumes and profits are possible.

Carla's plan is to turn some of her custom solutions into products with broad market appeal. Carla starts to lay out her plan: she will continue with the current custom business, so that she can pay the bills and obtain a continuous source of real market data about what problems customers are willing to pay to solve. From this custom software business, Carla is going to pick a couple of application niches - based on her assessment of the overall market potential. She'll do extensive market research to verify the market potential and user requirements. Then she'll allocate resources to build a product prototype. It's clear that this product development process is going to take time and that Carla needs to have a different marketing plan for the product business. Carla will have to align her company with system integrators and perhaps consider licensing her software for packaging or resale with other software products. This plan won't happen overnight.

Carla's goal is to grow the product portion of her business to at least 50% of her business over the next two years. To achieve this, she's decided to allocate 20% of her personal time to the development of the business plan for the product business. To reinforce her planning effort, she's also scheduled regularly monthly meetings with her advisors to review her progress.

Conclusion

Carla is now convinced that planning is critical to the growth and success of her business. She chuckles as she reminds us how she kept putting it off. She leaves the meeting with a cheerful "NOW I get it!" referring to our statement that "business planning is sort of like exercise, you know you should do it regularly and it's easy to put off because the benefits are not immediate."

Jean D. Sifleet (Business Attorney & CPA) and Cynthia G. Sechrest (CPA) provide services to entrepreneurs and growing companies. They can be reached at 978-772-6332. **VF**

The 8th Annual Venture Forum Entrepreneur's

Over 130 entrepreneurs and business executives gathered at WPI on Saturday, March 14 for the 8th Annual WPI Venture Forum Workshop. The program, "Supercharging Your Sales", gathered together innovative industry leaders and experts to give attendees the kind of top-level insight and ground-breaking sales tactics needed to accelerate revenue growth.

Sandra McCarthy, General Manager of Microsoft New England, began the discussions with insights on how Microsoft brings new products to market and their channel management strategies.

Those who joined us that Saturday were given the chance to ask panel experts how to raise their sales to the next level, what methods to increase direct sales work most effectively, how to get the most out of distribution channels and how to leverage the Internet in their sales strategies. "Ask The Experts" and great networking opportunities completed the program.

The WPI Forum would like to give a special "Thank You" and recognition to all of our sponsors and to all of the people who contributed hundreds of hours of their valuable time and expertise to prepare the 1998 Workshop. **VF**

Workshop

Workers Under Stress

by Richard Dacri, President, Dacri & Associates

E-mail, voice mail, computer modems and the Internet were touted as tools to make our work life easier and more efficient. No longer would we need to be chained to our desks to be able to get our jobs done. Technology has made it possible to get our work done from nearly anywhere - from our homes, or even the beach. But, according to a study released by the Work and Family Institute, employees are working longer hours and feeling more stressed. The study revealed that workers are working 3.5 hours more per week than they did 20 years ago and 60% of them say they do not have enough time to get their work done. Though the study showed that workers are loyal, satisfied and committed when working in supportive workplace, job stress still has a greater impact on their productivity than even family-related stressors. The study further revealed that pay and benefits are less important to workers than the quality of work and the supportiveness of the company. In a similar study of customer services personnel (Blessing/White, Inc.'s Study of Voluntary Effort in the Work), it was found that the responsibility of one's work, a sense of worth and recognition were far more important employee motivators than compensation.

Supportive Environment

So what are employers to do? How can employers help to reduce employee stress and ultimately increase overall productivity? Employers must continue to listen to what their employees are telling them. Though the demands of the job are creating stress and forcing them to work longer hours, if employers remain empathetic, supportive and provide meaningful work and recognition, then workers will continue to be productive. Developing other types of support mechanisms, including job and schedule flexibility, family-friendly programs such as child and elder care programs and access to an Employee Assistance Program (EAP) will ease their level of stress.

Job stress may be a fact of work-life. However, employers have the ability to provide their workers with the necessary support mechanisms to deal with it - and the studies show that it will pay off in employee loyalty and increased productivity.

Reprinted with permission from the Dacri Report, Your Human Resource Update, April, 1998, Volume 3.04. Dacri & Associates located in Westborough, Massachusetts specializes in Human Resource Management services. Richard can be reached at 1-800-892-9828 or e-mail at dacriassoc@aol.com. **VF**

Client Relations - A View From The Inside

by Stewart M. Hirsch, Esq.

Most successful professionals find that satisfied clients are the primary contributors of new business matters. Significant referrals may also result through satisfied customers. What raises client satisfaction and leads clients to give more work and valuable referrals? A critical portion of the answer is good work and a strong client relationship.

Following the three principles below will set you on the right course toward meeting this objective:

1. Do Good Work.

The quality of your work will probably be judged on the results it produces and on the client's view of whether your solution or response is practical and understandable. However, you cannot always rely on results to show the quality and value of your work. You can take additional steps to enhance your client's view of your work product. Here are several suggestions:

- Verbally explain your work in a clear and concise manner before any written work is provided to give the client an opportunity to review your work in light of your explanation.
- Provide an explanatory memorandum or letter which summarizes and simplifies key elements.
- Use a presentation method that will appear most professional and appropriate for the work you have done.
- Proofread carefully and correct any spelling, mathematical and grammatical errors.

2. Help The Client Look Good.

Make your client look good within (and in some cases, outside of) his/her organization by enhancing regard and respect for your client. Your client hired you to provide advice or resolve a problem. You are the client's outside "partner" and your work is a reflection on the client. Here are some basic "do's" and "don'ts":

- Make efficient use of time and materials, especially if you're "on the clock". Be sure you're on the right track and check in on this often. Inform the client of delays as soon as you are aware of them.
- Be prepared to assist the client with internal communications regarding your assignment. For example, your client may prefer that you provide written work in a specific format. Also, your client may need you to attend meetings.
- Acknowledge your client's contribution where appropriate, especially to or in front of his/her superiors. If the client makes mistakes, try not to blame the client, especially in front of others.
- Use the invoicing format the client prefers. This can make a difference as to how the client is viewed internally as a "supervisor" of your work.

3. Make the Client Feel Good (about you).

When the client "feels good" about you, his/her respect for and trust in you will increase as will the desire to give you more of the client's business. Here are some obvious and not so obvious suggestions to consider:

- Treat your client with respect and consideration. For example, return phone calls within the shortest time possible - under two hours is best. This shows the client that he/she is important to you.
- Be friendly and, where appropriate, personal. Show the client that you are interested in him/her as a person and not just as a source of revenue.
- Call just to check in without a business agenda. Tell the client that you are not charging for the call, and don't charge. The same concept applies to visiting or taking the client to breakfast or lunch.
- Solicit and give due regard to client feedback on your work and relationship. Seek suggestions on how you can better service the client's needs.

Conclusion

Most professionals like to think that a great work product is a guarantee of future business and referrals. Doing good work is important, but it is not enough. Even if you produce the best work product and a great result, if the client looks bad within his organization or does not feel good about you, you will probably not get more work and you will definitely not get referrals. Therefore, apply the same quality of effort into the relationship that you put into the work. When regard for the client is enhanced, and the client sees that you make the extra effort to show that you value the relationship, the client will have an extra incentive to seek your help again, and to refer you to others.

Stewart Hirsch, Esq. is a certified trainer for Net-Works and principal of Strategic Relationships, providing individual client development and relationship coaching. Stewart can be reached at 781-784-5280 or through Net-Works at 1-800-371-2264.

This article is reprinted with permission from NetResults, Summer/Fall 1997 issue. This is a publication of Net-Works, owned by Nancy Stephens who specializes in sales ideas for business growth. Nancy can be reached at the above telephone number at Net-Works or E-mail at njstephs@aol.com. **VF**

Web Sites and the Current State of Intellectual Property Law

by Kirk Teska, Iandiorio & Teska

As if it's not difficult enough to keep up with the quickly evolving technology surrounding the world wide web, the uncertainty in the slow-to-evolve law relating to what one may and may not do when constructing a web site severely frustrates those in the know.

"Can I link my web site to other web sites?" It depends. "Can I display information from other web sites on my own?" Maybe. "Can I use another company's trademarks as "metatag" key words?" Probably not.

The reason for the frustrating and ambiguous answers to these often-asked questions is that the law concerning these issues is just now being formed.

All 1,000,000 plus currently-in-use web sites have several common attributes and it is best to discuss the current state of the law as it relates to each attribute separately.

Common Attributes

One web site attribute is its address or "domain name", the identifier which the user enters to access a given web site. Each domain name, by definition, has to be "unique", but only from the stand point of a computer. Thus, although a computer can readily distinguish between www.playboy.com and www.playboyxxx.com, the law does not.

One reason, said the court when it enjoined the defendant's use of www.playboyxxx.com in light of Playboy's federal registration for playboy©, is that even if computers can distinguish between the two addresses, consumers could not.

This case and others make it fairly clear that your domain name better not be too similar to another company's existing trademark, especially if the respective services and/or products are similar. This is the end, however, of any clarity in the law.

Another attribute of most web sites is their use of "hyperlinks". A hyperlink is either bold or underlined text on a web page that, when selected by "clicking" with a mouse, causes a jump to another company's web site, or to a particular page of that web site, which the user is now able to peruse. After she is done, the "go back" selection returns her to the original web page.

Not Appreciated

Some companies, however, may not appreciate unauthorized hyperlinks to their web pages. For example, Ticket Master, whose web site offers, among other things, concert information and tickets, sued Microsoft whose web site includes hyperlinks to specific web pages of Ticket Master's web site. Ticket Master is asserting that by allowing user's to bypass the initial general advertising pages of Ticket Master's web site, Microsoft is guilty of unfair competition under federal and state law.

Depending on who wins, web site designers may not be able to include unauthorized hyperlinks, especially those which allow a jump deep into another company's web site. The counter argument is that by placing a web site on the internet, all companies are offering an implied license to establish links to that web site.

Megatags

Another feature of most web sites relating to hyperlinks is the metatag. These tags, hidden from the user, allow the various search engines to find a specific web site. So, if I design my web page to include the metatag "playboy", when an internet user attempts to find out information about Playboy via a web browser search engine, my web page address may show up in addition to or even instead of the real Playboy's web page address.

This is what happened in the case referenced above and the defendant was enjoined by the court from using metatags including Playboy's registered trademarks. Other similar fact patterns are the subject of a few recently filed and even settled lawsuits. Since the Playboy lawsuit involved the defendant's arguably deceptive intent to trade off on Playboy's trademarks, and since the other cases have not been adjudicated by a court, it is unclear as to what extent a company's web site can include metatags which identify another company's trademarks. Bad facts, however, can make bad law.

Another attribute of all web pages is that they display information. The information is usually in the form of text but can also be trademarks, designs, and icons.

If the text is "copied" from another source, the copyright laws can apply. In *The Washington Post v. Total News'* the defendant's web site caused portions of the plaintiff's web site to appear on the defendant's web site via a technique called "framing".

Alas, this case settled so whether the defendant actually violated the copyright law is unclear.

And, if a web site displays, as either hyperlinks or otherwise, another company's trademarks, the result could be trademark infringement, as in the Playboy case referenced to above, depending on how me trademark is used.

Proof Of Confusion

Trademark infringement requires proof of a likelihood of confusion due to the alleged infringer's use of another company's trademark which generally occurs when a consumer is likely to be confused about whether the two companies are some how affiliated. So, if Company A's web page references Company B's trademark in a way ▶

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that makes it clear that the trademark is not owned by Company B, there should be no infringement.

Unfortunately, however, as stated above, the law concerning this issue is less than clear. Indeed, the State of Georgia attempted to make criminal the use of another company's name, trademark, or logo in a manner which would falsely imply that the use was authorized. The ACLU, however, was successful in asserting that the Georgia law was an unconstitutional abridgment of the freedom of speech.

The use of another company's icons and other designs can also be a pitfall. icons are now sometimes protected by design patents as well as trademarks. Therefore, it is probably best to completely avoid the use of another company's icons or logos.

List Of "Do Nots"

The following, then, is the best list of fairly conservative "do nots" possible at this time given the slowly evolving state of the current law on the issue of intellectual property rights relating to web pages:

- Do not use another company's trademark or any name similar to another company's trademark as or as a part of your domain name.
- Do not design hyperlinks that cause a jump deep into someone else's web site without permission.
- Do not use another company's trademarks as metatags without permission.
- Do not allow the display of other company's web page text, trademarks, or icons on your web page.

Whether this list will expand or diminish in scope remains to be seen as the law develops.

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