

# Raising Capital

Cash infusions help fuel growth

By Richard Gottlieb

**T**here is a peculiar pattern that I believe is particular to the toy industry: A manufacturer enters the toy market, grows through its development of innovative products and excellent management, gets acquired by a larger toy company and then . . . it just vanishes. If I had to name a few, OddzOn and Aviva would both come to mind, but there are many more examples.

We are an industry whose growth has become stunted. One factor that has led to this may be the loss of highly creative companies that can develop exciting, out-of-the-box products that light up the entire toy industry. When these innovative small businesses are acquired by large, risk-averse companies, we as an industry lose the excitement they engender and the dollars they generate in new revenue.

So why do these dynamic companies become acquired rather than acquiring? Why don't they raise more capital and continue to grow? Why do we have just a handful of big players in the industry and then . . . everybody else? One reason may be a lack of sophistication in the toy industry about just how to raise capital, when to do it and where to find it.

## The money trail

Capital is the lifeblood of any industry. We in toys, however, are a bit like farmers who produce great crops but can only grow a limited amount because we don't know where to find fertilizer. It seems to me that this subject should be among the most talked about at toy industry conferences. Yet, I never hear it mentioned.

Or, is that just my imagination? I decided to find out. I conducted my own review of seminars being provided by toy industry institutions around the world and, as it turns out, none are currently being offered on raising capital. A search of past seminars unfortunately revealed a similar pattern—no instances of the topic on any institution's agenda.

My interest piqued, I wanted to learn a bit more about venture capital on my own. To do so, I contacted Roger Aguinaldo, CEO and publisher of *The M&A Advisor* and *Venturereporter.net*, its sister publication. Through his newsletters, seminars and various search engines, Aguinaldo enables companies and venture capital firms to find each other.

The point at which a company is in a position to attract venture capital is not in

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## LEGAL DEPARTMENT: COPYRIGHT CALCULUS

# The Sum of All Damages

By Marc C. Cooperman

**PICTURE THIS:** Over the weekend, your son's friend drops by wearing an obnoxious new T-shirt. But what really upsets you is that in the middle of the shirt is a character from a familiar video game, a game your company released a few months back and which has been flying off the shelves ever since. Your worst fears are realized when you learn the shirt was purchased from a Web site that is offering all sorts of clothing and merchandise featuring characters from the game, all of which is unauthorized.

You quickly dial your IP attorney. After you explain the situation and ask what your company's options are, she asks you the million dollar question: "Did you register the copyright for the game?"

"No, and I don't have to," you quickly respond. "My last IP attorney explained to me that your copyright exists when you create the work, and that you don't have to register the work to protect your copyright." You decided at the time to

save money and not register copyrights, unless there was a good reason.

That decision to be frugal may cost you in the long run. While you initially saved the \$45 registration fee and a few hundred dollars in attorney fees, you can't effectively do anything until you have a registration. The problem is, you need one immediately in order to try to shut down the Web site selling those T-shirts. But it will take time and, of course, money. Your attorney explains that you can request "special handling" at the copyright office. This usually gets you a registration in about two weeks (as opposed to about six months for a typical application) but it will cost you about \$700, plus attorneys' fees. And that's just the good news.

Here's the bad news: Without a registration, you usually can't get into court to stop the infringement. Knock-offs are a great target for preliminary relief like temporary restraining orders, or pre-

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the beginning, Aguinaldo says. Early start-ups are already challenged to find financing; they have not yet proven that their business models work. They may have great ideas and great products, but in most cases that will only get them financing from friends, family and their own credit cards, he explains.

In general, in order to attract outside capital, a company needs to have successfully sold product, shown a profit and created a positive cash flow. In other words, it doesn't just need to have created a great product; it needs to have created a successful business. Once this is done, the risk reduces, and outside investors are more prone to want in on the action.

The scary part, and the gist of the problem, is that raising outside capital entails taking on new risk. Think about it—an individual has a great idea, invests his savings (and maybe that of his extended family) and finally makes it. He has a positive cash flow, has paid off his debts, and, suddenly, he needs to decide whether to cash out or take on risk all over again. Taking on risk is scary in itself, but doing so without knowledge of how to raise money makes it a pretty daunting task.

No wonder so many entrepreneurs sell out rather than raising the stakes.

Making it even more challenging, says Aguinaldo, is that most rapidly growing companies consist of just

one or two owners and the few people they employ. The owners really haven't had time to think about what was going to happen when their growth trajectory outstripped their assets, so when they are suddenly confronted with this major decision, they frequently don't know where (or to whom) to turn.

When they do turn to someone, it is typically a lawyer and/or an accountant. That is an appropriate step, says Aguinaldo, in that it is important to confirm that the company's basics are sound. He goes on to point out, however, that it is equally important to recognize the limits of knowledge that most lawyers and accountants have. They may know your company inside out, but not when, where or how to find financing.

Who, then, is knowledgeable? According to Aguinaldo, a good person to contact is an investment banker. An investment banker knows the capital markets and therefore can serve as an informed consultant when considering how much to borrow and whom to purchase or merge with, to how and where to find the capital to do so.

**Let's talk**

My recent travels to toy industry shows and meetings have convinced me that we have, and always will have, some dynamic, mid-sized companies. As an industry, we need to make sure that they don't go away,

and that they grow to become industry leaders. To do so, I would like to see our industry institutions provide seminars on the topic of raising capital.

Here are some issues to discuss:

- What kind of shift in attitude and outlook is necessary when considering growth?
- How and where can toy companies find venture capital?
- How does one find funding at the different stages of a business's growth?
- Of what should a venture capital proposal consist?
- How do you value your own or someone else's business?
- What kind of venture capitalist invests in the toy industry?

Maybe if we help our best relatively new companies, inventors and executives find the monetary equivalent of Miracle-Gro fertilizer, we as an industry will once again experience dramatic growth.

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liminary injunctions. Your registration is your admission ticket to court. At a minimum, you'll need to wait several weeks to get to court, while the Web site keeps operating and making profit.

You can't stop the bad guys through import limitations either—at least, not yet. One of the benefits of copyright registration is the ability to file with U.S. Customs, and have infringing goods seized. Again, it's another lost opportunity on your part.

***“Copyrights are among the most powerful IP weapons toy and game companies can have in their arsenals. Know when to spend a little to have them ready—so you can quickly stop the bad guys.”***

Finally, once you have your registration and are in court, you may have lost two of your biggest clubs to wield. With limited exceptions, unless you register your copyright before the infringement begins, you cannot collect statutory damages (which can get you up to \$150,000 per work). And you cannot recover your attorneys' fees, which are bound to be several hundred thousand dollars, at a minimum.

Copyrights are among the most powerful IP weapons toy and game companies can have in their arsenals. Know when to spend a little to have them ready—so you can quickly stop the bad guys.

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into something very successful to us. It seems to be what licensors are looking for, but most are still not ready to come to the Middle East.”

The Toy Store's Bracken believes that the Middle East can be a tricky region, but that someone has to make the first move bringing in new product and brands that have never been seen there before. “It's an excuse when people say a property doesn't translate in the Middle East,” said Bracken. “The Simpsons has been a property here for many years, but it just wasn't marketed properly. There's such a huge mix of consumers here.”

Overall, it's important for retailers within the Middle East to get out and go to shows in the U.S. and elsewhere and find the next big thing, according to Grobovsek, who added, “From the purchasing side, you cannot sit behind a desk and decide what a 6-year-old girl wants to play with. It just doesn't happen.” ■



■ One of the plush aisles at The Toy Store.

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# Fulla Fun

**NEW BOY IS REACHING** the Middle East with offices in Dubai and Jeddah,



Saudi Arabia, and headquarters in Syria, and within multiple toy categories, including crafts, outdoor toys, interactive toys, early learning story books that teach English (like those about Prophet Saleh and his camel), musical marionettes, R/C and plush. But Fulla is its golden ticket.

The company has even opened a dedicated Fulla shop in Syria in 2005, which continues to sell out of anything Fulla-themed—dolls, bags, kids' apparel and accessories. Whether the doll will make it to the United States anytime soon is still unclear, although the manufacturer is more than ready for toy retailers who are hoping to reach U.S. Muslims. —TB



Photos: Charles Seesselberg