INTA CERTIFICATE PROGRAM

COURSE:

Excel for Financial Analysis

Chapter 1

INTA International Trademark Association

Acknowledgements

INTA thanks the leadership, members of the 2022 - 2023 Commercialization of Brands Committee, and staff for their efforts in developing this training program.

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INTA

Finance, Budgeting, Financial Models, Financial Reporting

Chapter Overview

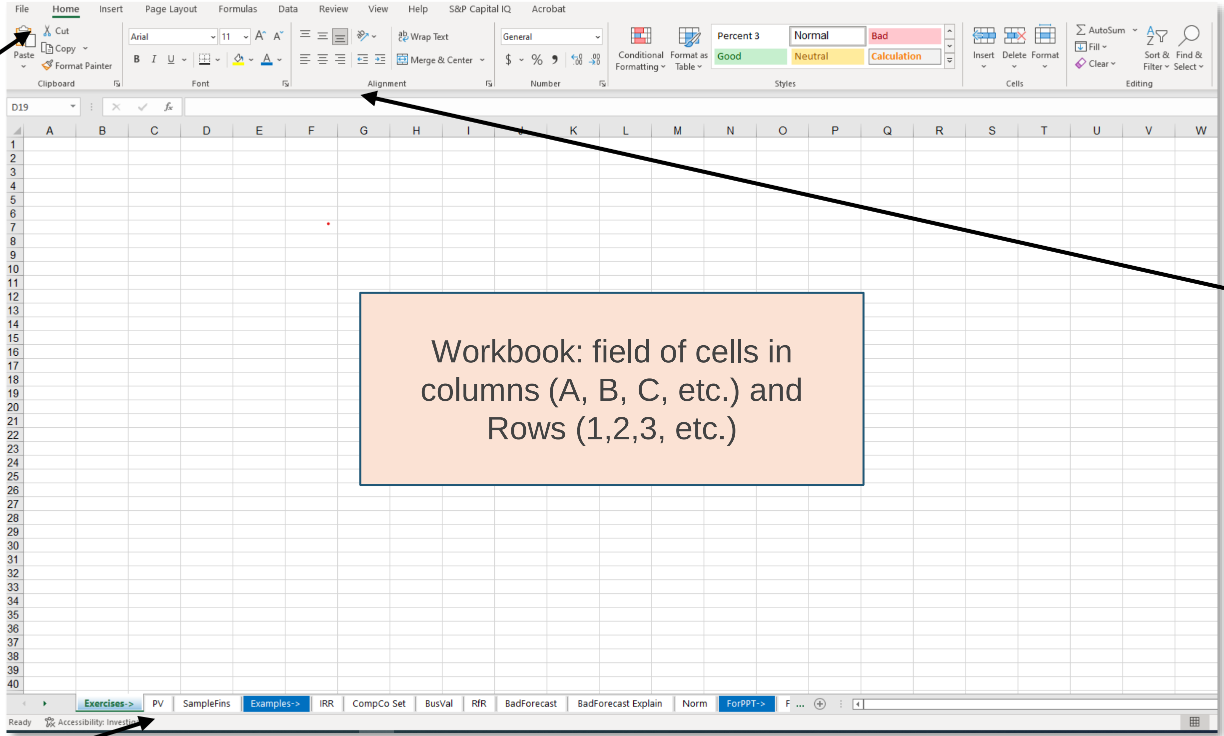
Topics Covered:

- Basics of Spreadsheets
- Formulas
- Organizing and Sharing Data, Pivot Tables, Building Charts & Graphs
- Models: Plan, Build, Check
- Data Tables & Sensitivity Tests
- Quiz / Knowledge Test

At the end of this Chapter, attendees should know…

- ✓ The basic functions of Excel
- ✓ How to create formulas in Excel
- ✓ The basics of managing, organizing and presenting data in Excel
- ✓ The basics for building financial models in Excel

Basics of Spreadsheets



Menus

Ribbon: options within each Menu

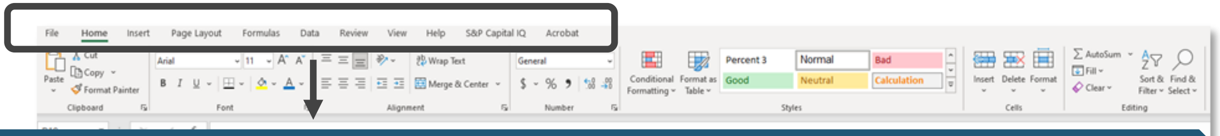
Workbook: field of cells in columns (A, B, C, etc.) and Rows (1,2,3, etc.)

Worksheet Tabs

Basics of Spreadsheets

Worksheets, Tabs & Workbooks

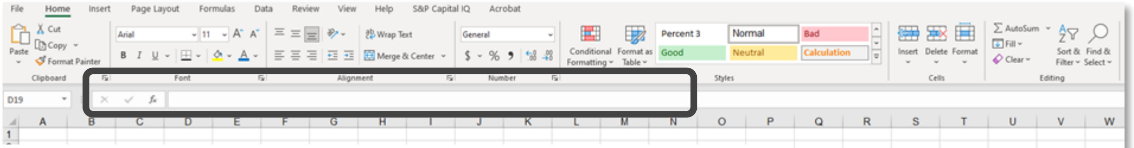
- A Workbook is the entire Excel file, which can be made up of multiple Worksheets
- A Worksheet is a single spreadsheet made up of cells which are organized into rows and columns
- Tabs are the representations of Worksheets and are found at the bottom of the Excel window. By default, when a new, blank Excel file is opened, the tabs are called “Sheet1”, “Sheet2”, etc., but can be renamed by double-left-clicking on the Tab name, or by right-clicking the Tab and clicking “Rename”



Ribbon: Toolbar found at top of Excel Window

File	Allows users to open new or existing workbooks, save, print
Home	Format cells & text
Insert	Create Pivot Table; create charts/graphs from a data table
Page Layout	Settings for visual representation of printed worksheet
Data	Sort, filter, text to columns, What-If Analysis
Review	Protect worksheet/workbook (not necessary unless using a shared document); add comment (better to right-click on a cell instead)
View	Freeze panes; create Macros (advanced)

Formulas



Formula Tools

- *"fx"* Formula Bar in Excel – found directly above the cell grid
- Locking cells (function $ F4)
- Drag formulas down rows/across columns
- Shortcuts? Ctrl+C; Ctrl+V

User Tips

- Don't type numbers in your formulas! Known as "Hardcoding", leads to errors and miscalculations
- Consider color-coding/shading using "Fill Color" button on Home
- Add notes and comments in columns to the right (outside the print range)

Review

- Open the sample Excel file and review each of the menus
- See Supplemental Slides for additional instructions for:
  - Present Value calculations
  - Common Size calculations

Exercises

Use the file Excel Exercises Chapter 1 to:

A. Complete the Present Value formulas in the yellow highlighted cells at tab PV!

B. Complete the Sample Financial Ratio Formulas in the yellow highlighted cells at tab Ratios!

Managing & Analyzing Data Sets

Managing & Analyzing Data

- Imported data, CSV Files
- Formatting options, Print Range, Grouping Data, Freeze Panes, Rows to repeat at top of page
- Filtering and sorting (Data Menu)
- Data Analysis formulas (count, average, sumif)
- Pivot Tables

User Tips

- Don’t combine numbers and text
- Use columns for categories of data, set up a header row
- Consistent entries - Use the autofill
- Avoid blank rows
- Don’t color – use categories not the color formatting to identify multiple entries within a category

Excel Exercises
In the Excel File, Excel Exercises Chapter 1.xls**:**

- Recreate the data analysis formulas shown at tab Data Analysis!
- Gather, format and edit any other set of data in your pos
- Use the similar formulas to analyze your data set

Models

Design Tools

- Inputs & Outputs
- Assumption variables – should be the only input cells; all other cells should flow via formulas from original assumption cells
- User Tip: Don’t type numbers in your formulas

Pro Tips

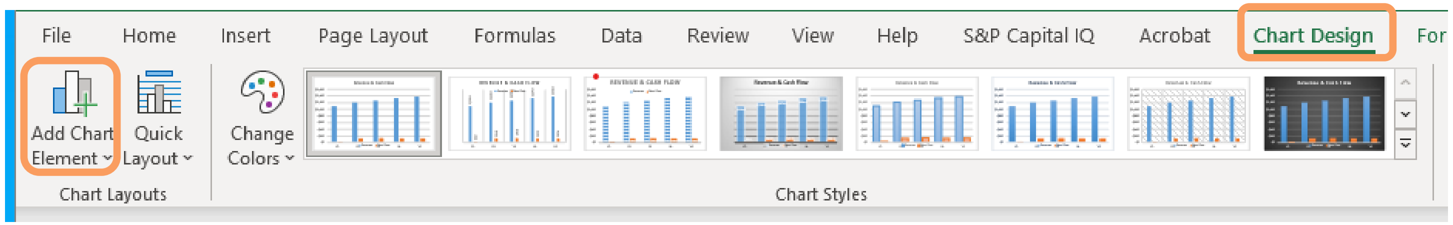
- Outline before you start
- Build and use an Assumptions Tab
- Use cells outside the results field for notes and calculations
- What if: Data tables and Goal Seek

Assumptions & Past Results
↓
Forecast
↓
Calculations
↓
Results & Analysis

Optional Exercise

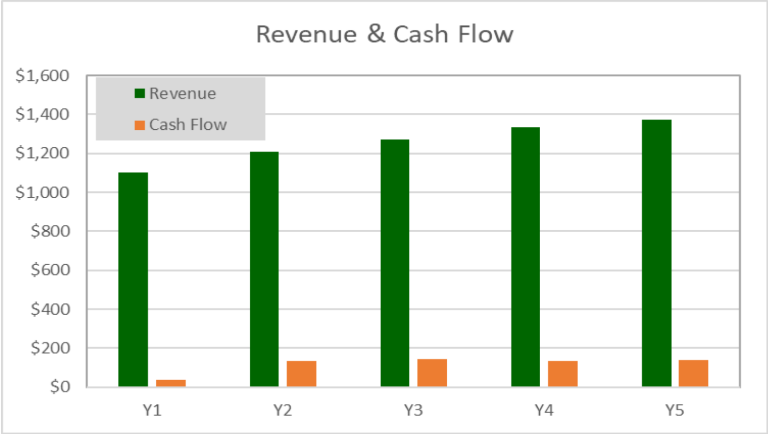
- Review the Business Valuation model at tab ValuationDataTable!
- Recreate the Sample Chart
- Recreate the Valuation Result Data Tables

Charts & Graphs



Use the Excel Chart Design menu to add and format charts

Business Valuation						
$US000s	Y0	Y1	Y2	Y3	Y4	Y5
Revenue	1,000.0	1,100.0	1,210.0	1,270.5	1,334.0	1,374.0
COGS		550.0	605.0	635.3	667.0	687.0
Gross Profit		550.0	605.0	635.3	667.0	687.0
Operating Expenses		275.0	314.6	343.0	400.2	439.7
Depreciation & Amortization		25.0	40.0	40.0	35.0	35.0
Operating Income (EBIT)		250.0	250.4	252.2	231.8	212.3
Tax Expense		120.0	124.6	120.5	95.9	71.9
Net Operating Profit After Tax		**130.0**	**125.8**	**131.7**	**135.9**	**140.4**
Cash Flow Adjustments						
Plus: D&A		25.0	40.0	40.0	35.0	35.0
Less: Increase in WC		(10.0)	(11.0)	(6.1)	(6.4)	(4.0)
Less CapEx		(110.0)	(20.0)	(20.0)	(30.0)	(35.0)
Invested Capital Cash Flow		**35.0**	**134.8**	**145.6**	**134.5**	**136.4**



Detailed steps presented in the Supplemental Slides

Intro | Spreadsheets | Formulas | Organizing Data | Models | Tables | Additional Resources

Additional Resources

Supplemental Slide Decks with Step-by-step Instructions

1. Present value steps.ppt
2. Common size steps.ppt
3. Data Table steps.ppt
4. Chart steps.ppt

Excel Practice

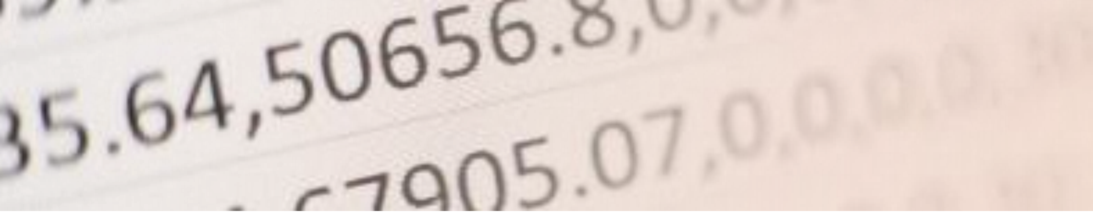
Excel Practice (the Exercises)

1. Present Value calculations – tab PV!
2. Financial Ratios – tab Ratios!
3. Data Analysis – tab DataAnalysis!
4. Data Tables – tab ValuationDataTable!
5. Charts – tab ValuationDataTable!

Optional Exercises

Create a chart presenting Net Revenue and Profits using the Ratios!, worksheet tab

Create a line chart comparing Quantity Sold and Average Unit Price using data at the DataAnalysis!, worksheet tab (plot Quantity on the left Y axis and Average Price on right Y axis)



Additional Excel Resources

Online Excel Courses

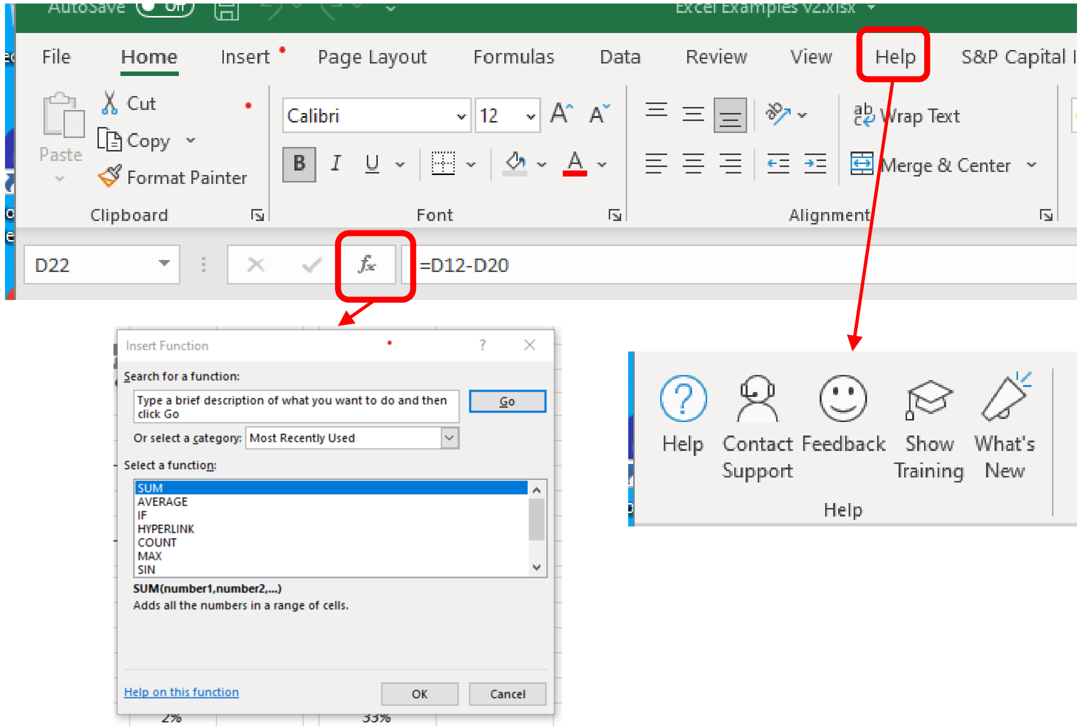
- LinkedIn Learning: Over 200 online courses on Excel including a Skill Evaluation Tool
- Corporatefinanceinstitute.com (CFI): Excel Fundamentals – Formulas for Finance, Free, 3.5 hours. The CFI also certificate programs
- Coursera: Excel Skills for Business Specialization. Free, 4-course package with instructors
- YouTube: The Beginner's Guide to Excel - Excel Basics Tutorial

Other Resources

- Excel Keyboard Shortcuts
- 7 Absolutely Essential Excel Courses to Supercharge Your Finance

Excel Help Function

In Excel, the toolbar includes a help menu and the fx formula bar includes formula descriptions and help on functions



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- **Trevor Longchamps,** INTA

Intro | Spreadsheets | Formulas | Organizing Data | Models | Tables | Additional Resources

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INTA CERTIFICATE PROGRAM

COURSE:

Financial Statements

Chapter 2

INTA International Trademark Association

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Chapter Overview

Topics Covered:

- Key Terminology
- Income Statement
- Statement of Cash Flows
- Balance Sheet
- Financials for IP Analysis

At the end of this session, attendees should know…

✓ What are the major types of financial statements and what are the differences between these types (P&L, B/S, CFS, SofE)

✓ What are the terms used on financial statements (liability, amortization, revenue, expense, EBITDA, etc.)

✓ Where to find IP-relevant information on the financial statements

Financial Statements & Terminology

Types of Financial Statements

Profit & Loss (P&L)	AKA, Income Statement. Revenues and expenses reported by the Company during a defined time period
Balance Sheet (B/S)	AKA, Statement of Financial Position. Asset, liabilities and equity balance at a defined point in time
Cash Flow Statement	Reports changes to cash position at company, via operations, investing and financing
Shareholders Equity	Reports changes to amount of equity invested in company

Financial Statement Terminology

Cash / Accrual	The accounting basis used to prepare financial statements
Reporting Period	The period of time for which financial results are presented
Common Size	Presentation of the financial results as a percentage of an item on the P&L or B/S, typically Net Revenue
Line Item	An item reported on the financial statements

Sample Financial Statements

Income Statement

	Year 1	Year 2	Year 3
Revenues			
Gross Sales	1,000	1,550	1,890
Discounts / returns	(5)	(7)	(11)
Net Revenue	**995**	**1,543**	**1,879**
Cost of Sales	600	900	1,026
Gross Profit	395	643	853
Operating Expenses			
Sales & Marketing	200	170	225
Research & Development	30	80	120
General & Admin	50	75	80
Depreciation	53	61	82
Amortization of Intangibles	-	7	11
Total OperExp	333	393	518
Operating Income	**62**	**250**	**335**
Other Income / (Expense)			
Interest, net	(13)	(10)	(9)
Other Income (expense)	-	-	5
Total Other Income	(13)	(10)	(4)
Pre-tax Income	49	240	331
Tax Expense	(30)	(53)	(110)
Net Profit	**19**	**187**	**221**

Balance Sheet

	Year 1	Year 2	Year 3
Assets			
Cash	278	476	642
Accounts Receivable	60	80	95
Inventory	100	65	82
Total Current Assets	438	621	819
Property, Plant & Equip.	213	245	330
Accum. Depreciation	(53)	(114)	(197)
PP&E, Net	159	130	133
Goodwill & Intangibles	38	31	40
Total Assets	**634**	**781**	**991**
Liabilities			
Current Portion of Debt	25	20	18
Accounts Payable	15	35	49
Total Current Liabilities	40	55	67
Debt (Non-current)	225	180	158
Total Liabilities	265	235	224
Paid in Capital	350	340	340
Retained Earnings	19	206	427
Total Equity	369	546	767
Total Liabilities & Equity	**634**	**781**	**991**

Cash Flow Statement

	Year 1	Year 2	Year 3
Net Profit	19	187	221
Depreciation & Amortization	53	68	93
Change in Current Assets	(160)	15	(32)
Change in Current Liabilities	15	20	14
Cash from Operations	(73)	290	296
Capital Expenditures	(175)	(42)	(55)
Acquisitions (Divestments)	(75)	10	(50)
Cash from Investing	(250)	(32)	(105)
Debt Issued (Repaid)	250	(50)	(25)
Stock Issued (Repurchased)	350	(10)	-
Dividends paid	-	-	-
Cash from Financing	600	(60)	(25)
Net Change in Cash	**278**	**198**	**166**

See INTA Excel Exercises Session 2.xls

Sample Financial Statements - P&L

Alphabet Inc.
CONSOLIDATED STATEMENTS OF INCOME

1040 U.S. Individual Income Tax Return 2001

Income Statement

	Year 1	Year 2	Year 3
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Many different formats . . .

- 10-K
- 1040 tax return
- Excel
- QuickBooks

. . . but all contain 3 main sections:

- ***Sales & Gross profit***
- ***Operating expense***
- ***Financing and tax***

Key Elements of P&L

Income Statement	Year 1	Year 2	Year 3
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Identifying key elements from the P&L

- Gross v Net Revenue
- Cost of Goods Sold (COGS) and Gross Profit
- Selling General & Administrative expenses (SG&A) and operating expenses
- Earnings before Interest, Tax, Depreciation and Amortization (EBITDA)
- Earnings before Interest and Tax (EBIT)
- Non-operating and non-cash expenses
- Tax expense
- Net Profit (aka Net Income)

Key Line Items on the Cash Flow Statement

Cash Flow Statement			
	Year 1	Year 2	Year 3
Net Profit	19	187	221
Depreciation & Amortization	53	68	93
Change in Current Assets	(160)	15	(32)
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Cash from Financing	600	(60)	(25)
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Identifying Key Elements

- Cash flow from Operations
- Capital expenditure and acquisitions
- Borrowings & repayment
- Equity investment

Key Line Items on the Balance Sheet

Balance Sheet	Year 1	Year 2	Year 3
Assets			
Cash	278	476	642
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Total Liabilities & Equity	**634**	**781**	**991**

Identifying key elements from the Balance Sheet

- Working Capital
- Current Assets v. PP&E and Investments
- Goodwill
- Liabilities and Debts
- Shareholder equity and retained Earnings

Using the Financial Reports

Financial Statement Analysis

- Vertical Analysis: Review the statements vertically, to view the percentages of line items relative to one another
- Horizontal: Review the statements horizontally, review results in relation to results in other years
- Benchmarking: Compare results, ratios and trends to guideline companies

Performance Measures not typically included in Financial Reports

- EBITDA and EBIT
- Business segment performance / geographic performance
- Fair Market Value for intangibles (Acquired assets at Cost, internally developed assets not reported)
- Incremental Profit (see slide on damages)

Excel Exercise

Using the sample financial reports, calculate:

1. Common Size Statements
2. Financial Ratios

Session 3 will cover Benchmarking, a deeper dive into Financial Ratios

Key Ratios for Financial Analysis (for IP Analysts)

Compare over time and versus Benchmarks

Gross Revenue / Net Revenue
Impact of returns, discounts, coupons and other price breaks

Gross Profit Margin
Gross Profit = Revenue – Cost of Goods
Gross Profit Margin = GP / Revenue

Indicates ability to achieve monopoly pricing

Marketing Expense / Revenue
Advertising, Selling, Marketing expenses

Valuable IP should reduce marketing costs

Royalties / Revenue
Does company report royalty income or royalty expense?

Working Capital Ratios
A/R Days, Inventory Days, WC/Revenue

Can indicate growing or waning pricing power

Asset Leverage Ratios
ROA (EBIT/Assets), PP&E/Total, ROE

Ability to leverage PP&E and Capital

Cash Flow Ratios
Operating Cash Flow / Revenue

Cash flow is a great indicator of value

Cash Flow Ratios
Investing Cash Flow / Revenue

Is the company acquiring assets, selling assets?

Are Guideline Companies acquiring or selling?

Financial Statements and Trademarks

Where on the Financial Statements is information about Trademarks?

Where is information about Brands?

Evidence on impact on financial performance

- **IP yields Pricing Power**
  - Net Revenue / Gross Revenue
  - Gross Profit Margin

- **IP yields larger Sales Volumes**
  - Revenue Growth

- **IP yields Cost Savings**
  - EBITDA Margin
  - Operating Cash Flow Margin
  - SG&A as % of Revenue
  - Return on Assets, Return on Equity
  - Working capital ratios

- **Licensing / Monetization Income**

Damages and Transactions

Which types of financial statements do you want to see for calculating damages?

Which types are helpful for transactions involving trademarks?

Damages

- Measure of profitability is typically "Incremental Profit"
  - Incremental Profit is a term of art, rather than a term defined in accounting or finance
  - Definition for Incremental Profit can vary by jurisdiction, industry and situation
  - Concept is similar to activity-based accounting from managerial accounting – how much profit is derived from a business activity that depends on shared resources.
- Categories of expense for calculation of Incremental Profit:
  - Product-specific expenses
  - Direct assistance expenses
  - Overhead expenses

Transactions

- Incremental Profit for any operations using the Trademark (if trademark is not used by the entire organization)
- Gross profit margin, Working Capital Ratios and CFO/Sales all provide useful insight to evaluate performance of trademark users, licensees, franchisees and brand owners
- If evaluating a licensee or franchisee, consider Interest Coverage. If cash flows decline, the licensee's ability to pay royalties may be impacted by its ability to pay its debts.

Public v. Private

Differences in statements for public versus private companies?

Public Company Financials

- Audited
- Comply with GAAP/IFRS
- More consolidation of line items (SG&A as one line)
- Notes and supplemental reporting (ESG, CSR, etc.)

Closely-held Company Financials

- Compiled, reviewed or audited
- May not comply with GAAP/IFRS
- More line items, less consolidation
- Fewer notes

Financial Statements Signals of Distress

Red Flags

- Declining gross profit margin
- Declining ratio of Cash Flow from Operations to Revenue
- Declining interest coverage ratio (EBITDA/Interest Expense)
- Increasing Working Capital Ratio (WC/Sales)
- Increasing ratio of SG&A to Sales (or Marketing Expense / Sales)

Red flags – what signals a discrepancy/concern in financial statements?

Additional Resources

- Practical Guide to Successful Intellectual Property Valuation and Transactions, Chapter 1, Wolters Kluwer, 2022
- Finance & Accounting for Lawyers, 2nd Edition, BVR. Available at bvresources.com
- AICPA Practice Aid 06-3, “Analyzing Financial Ratios,” 2006, American Institute of Certified Public Accountants, www.aicpa.com

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COURSE:

Benchmarking & Financial Analysis

Chapter 3

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Business valuation expert, Closely-held company valuations, M&A, Forensic and investigative accounting

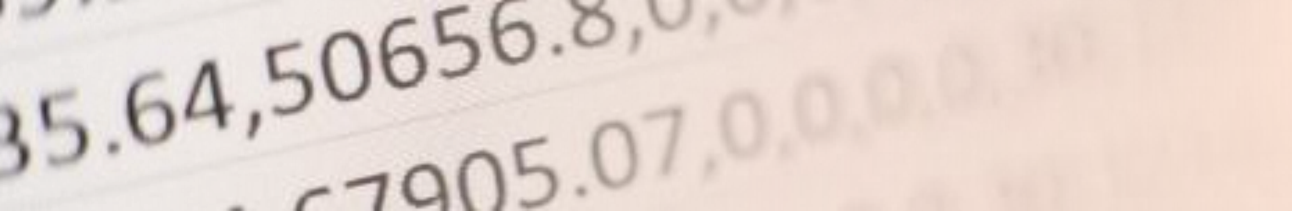
Chapter Overview

Topics Discussed:

- Definition of Benchmarking
    - Types of benchmarking
- Implementing Benchmarking
    - Financial performance ratios
    - Credit ratios
    - Key ratios for IP analysis
- Guidelines Implementing Benchmarking
- Sources on Benchmarking + Quiz

At the end of this session, attendees should be able to…

- ✓ Define benchmarking and identify major approaches to benchmarking
- ✓ Critically assess different financial and non-financial metrics used in benchmarking
- ✓ Identify appropriate metrics/standards for conducting IP benchmarking



What is Benchmarking and Why is it Important?

Benchmarking

Benchmarking – a process of applying standards for measuring or judging employees, products, departments, organizational activities, and companies

Benchmarking is an improvement process, in which an organization measures its performance against its peers and best-in-class companies.

Terminology: "Guideline Companies," "Peers," and "Comparables" – all terms that refer to those companies used as benchmarks

Often, the objective of benchmarking is to identify and rank attributes or metrics to differentiate top-tier from inferior organizations and to develop strategies aimed at narrowing the gap with best-in-class businesses

Types of Benchmarking (Cont.)

Benchmarking

Vertical

Horizontal

Activity-based

1 **Vertical benchmarking**

Seeks to quantify the productivity, costs, workloads, and other types of performance of a defined functional areas (e.g., marketing or PR). Comparing reported results relative to each other.

For example, Company X reported net revenue of $100,000 last year. During the same period, Company X reported Cost of Goods Sold of $58,000 and Gross Profit of $42,000. The Gross Profit Margin for the Period is 42%.

Types of Benchmarking (Cont.)

Benchmarking

- Vertical
- **Horizontal**
- Activity-based

2 Horizontal benchmarking

Seeks to analyze the costs, workloads, productivity, and performance of a single process/activity that cuts across one or more functional areas or departments within an organization, comparing the performance metrics over time.

For example, Company X achieved a Gross Profit Margin of 42% this year. In prior years, Gross Profit Margin was 37% and 39%, Therefore, performance at Company X is improving.

Types of Benchmarking (Cont.)

Benchmarking

- Vertical
- Horizontal
- **Activity-based**

3 Activity-based benchmarking

An approach in which a selected number of activities, which are either typical or representative of the range of institutional provision, are analyzed and compared with similar activities in other selected organizations.

For example, Company X achieved a Gross Profit Margin of 42%. Comparable companies achieved margins of 35% and 38%. Therefore, Company X is performing better than comparable companies

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Sample Financial Statements

Income Statement				Calculations				
				% of Net Revenue			Annual Change	
	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3	Y2 / Y1	Y3 / Y2
Revenues								
Gross Sales	1,000	1,550	1,890	*101%*	*100%*	*101%*	*55%*	*22%*
Discounts / returns	(5)	(7)	(11)	*-1%*	*0%*	*-1%*	*40%*	*57%*
Net Revenue	**995**	**1,543**	**1,879**	***100%***	***100%***	***100%***	***55%***	***22%***
Cost of Sales	600	900	1,026	*60%*	*58%*	*55%*	*50%*	*14%*
Gross Profit	395	643	853	*40%*	*42%*	*45%*	*63%*	*33%*
Operating Expenses								
Sales & Marketing	200	170	225	*20%*	*11%*	*12%*	*-15%*	*32%*
Research & Development	30	80	120	*3%*	*5%*	*6%*	*167%*	*50%*
General & Admin	50	75	80	*5%*	*5%*	*4%*	*50%*	*7%*
Depreciation	53	61	82	*5%*	*4%*	*4%*	*15%*	*35%*
Other	-	7	11	*0%*	*0%*	*1%*		*57%*
Total OperExp	333	393	518	*33%*	*25%*	*28%*	*18%*	*32%*
Operating Income	**62**	**250**	**335**	***6%***	***16%***	***18%***	***304%***	***34%***
Other Income / (Expense)								
Interest, net	(13)	(10)	(9)	*-1%*	*-1%*	*0%*		
Other Income (expense)	-	-	5	*0%*	*0%*	*0%*		
Total Other Income	(13)	(10)	(4)	*-1%*	*-1%*	*0%*		
Pre-tax Income	49	240	331	*5%*	*16%*	*18%*		
Tax Expense	(30)	(53)	(110)	*-3%*	*-3%*	*-6%*	*77%*	*108%*
Net Profit	**19**	**187**	**221**	***2%***	***12%***	***12%***	***865%***	***18%***

Balance Sheet				Calculations				
				% of Total Assets			Annual Change	
	Year 1	Year 2	Year 3	Year 1	Year 2	Year 3	Y2 / Y1	Y3 / Y2
Assets								
Cash	278	476	642	*44%*	*61%*	*65%*	*71%*	*35%*
Accounts Receivable	60	80	95	*9%*	*10%*	*10%*	*33%*	*19%*
Inventory	100	65	82	*16%*	*8%*	*8%*	*-35%*	*26%*
Total Current Assets	438	621	819	***69%***	***79%***	***83%***	***42%***	***32%***
Property, Plant & Equip.	213	245	330	*33%*	*31%*	*33%*	*15%*	*35%*
Accum. Depreciation	(53)	(114)	(197)	*-8%*	*-15%*	*-20%*	*115%*	*72%*
PP&E, Net	159	130	133	***25%***	***17%***	***13%***	***-18%***	***2%***
Goodwill & Intangibles	38	31	40	*6%*	*4%*	*4%*	*-19%*	*30%*
Total Assets	**634**	**781**	**991**	***100%***	***100%***	***100%***	***23%***	***27%***
Liabilities								
Current Portion of Debt	25	20	18	*4%*	*3%*	*2%*	*-20%*	*-13%*
Accounts Payable	15	35	49	*2%*	*4%*	*5%*	*133%*	*40%*
Total Current Liabilities	40	55	67	***6%***	***7%***	***7%***	***38%***	***21%***
Debt (non-current)	225	180	158	*35%*	*23%*	*16%*	*-20%*	*-13%*
Total Liabilities	265	235	224	***42%***	***30%***	***23%***	***-11%***	***-5%***
Paid in Capital	350	340	340	*55%*	*44%*	*34%*	*-3%*	*0%*
Retained Earnings	19	206	427	*3%*	*26%*	*43%*	*965%*	*107%*
Total Liabilities & Equity	**634**	**781**	**991**	***100%***	***100%***	***100%***	***23%***	***27%***

Key Ratios for Financial Analysis (for IP Analysts)

Compare over time and versus Benchmarks

Gross Revenue / Net Revenue
Impact of returns, discounts, coupons and other price breaks

Gross Profit Margin
Ratio of Gross Profit to Revenue

Indicates ability to achieve monopoly pricing

Marketing Expense / Revenue
Advertising, Selling, Marketing expenses

Valuable IP should reduce marketing costs

Royalties / Revenue
Does company report royalty income or royalty expense?

Working Capital Ratios
A/R Days, Inventory Days, WC/Revenue

Can indicate growing or waning pricing power

Asset Leverage Ratios
ROA (EBIT/Assets), PP&E/Total, ROE

Ability to leverage PP&E and Capital

Cash Flow Ratios
Operating Cash Flow / Revenue

Cash flow is a great indicator of value

Cash Flow Ratios
Investing Cash Flow / Revenue

Is the company acquiring assets, selling assets?

Are Guideline Companies acquiring or selling?

Sample Guideline Company Analysis

Guideline Company Financial Data										
	Results in USD Millions, As of 31Dec2020									
Company Name	**Total Revenue**	*1 Year Rev. Growth*	**Gross Profit**	**Gross Profit Margin**	**EBITDA**	**EBITDA Margin**	**R&D Expense**	**R&D / Revenue**	**Return on Assets**	**Return on Equity**
GoTo Group, Inc.	1,260	*4.7%*	937	*74.4%*	319	*25.3%*	142	*11.3%*	-0.4%	-0.5%
Salesforce, Inc.	17,098	*28.7%*	12,863	*75.2%*	2,598	*15.2%*	2,766	*16.2%*	0.2%	0.4%
Adobe Inc.	12,868	*15.2%*	11,146	*86.6%*	4,808	*37.4%*	2,188	*17.0%*	21.7%	39.7%
Autodesk, Inc.	3,274	*27.4%*	2,984	*91.1%*	465	*14.2%*	851	*26.0%*	3.5%	-154.2%
Workday, Inc.	3,627	*28.5%*	2,562	*70.6%*	(226)	*-6.2%*	1,550	*42.7%*	-7.1%	-19.3%
Citrix Systems, Inc.	3,237	*7.5%*	2,771	*85.6%*	725	*22.4%*	538	*16.6%*	10.3%	449.8%
SAP SE	33,441	*-0.8%*	24,105	*72.1%*	10,039	*30.0%*	5,440	*16.3%*	8.8%	17.2%
Oracle Corporation	39,068	*-1.1%*	31,130	*79.7%*	17,119	*43.8%*	6,067	*15.5%*	8.8%	79.7%
VMware, Inc.	10,811	*12.5%*	9,012	*83.4%*	2,276	*21.1%*	2,522	*23.3%*	24.4%	91.5%
Peer Group Median	10,811	*12.5%*	9,012	*79.7%*	2,276	*22.4%*	2,188	*16.6%*	*8.8%*	*17.2%*
Peer Group Average	13,854	*13.6%*	10,835	*79.9%*	4,236	*22.6%*	2,452	*20.5%*	*7.8%*	*56.0%*
Peer Group Min	1,260	*-1.1%*	937	*70.6%*	(226)	*-6.2%*	142	*11.3%*	*-7.1%*	*-154.2%*
Peer Group Max	39,068	*28.7%*	31,130	*91.1%*	17,119	*43.8%*	6,067	*42.7%*	*24.4%*	*449.8%*
Subject Company	**1,879**	***21.8%***	**853**	***45.4%***	**417**	***22.2%***	**120**	***6.4%***	***33.8%***	***22.3%***

Sample Guideline Company Analysis

Guideline Company Financial Data

Results in USD Millions, As of 31Dec2020

Company Name	Total Revenue	*1 Year Rev. Growth*	Gross Profit	Gross Profit Margin	EBITDA	EBITDA Margin	R&D Expense	R&D / Revenue	Return on Assets	Return on Equity
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Adobe Inc.	12,868	[illegible]	[illegible]	*86.6%*	4,808	*37.4%*	2,188	*17.0%*	21.7%	39.7%
Autodesk, Inc.	3,274	[illegible]	[illegible]	*91.1%*	465	*14.2%*	851	*26.0%*	3.5%	-154.2%
Workday, Inc.	3,627	[illegible]	[illegible]	*70.6%*	(226)	*-6.2%*	1,550	*42.7%*	-7.1%	-19.3%
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Subject Company	**1,879**	***21.8%***	**853**	***45.4%***	**417**	***22.2%***	**120**	***6.4%***	***33.8%***	***22.3%***

Lower GPM, price or efficiencies issues?

Lower operating expenses yield greater returns

Smaller, but growing faster than most

Additional Resources

- Practical Guide to Successful Intellectual Property Valuation and Transactions, Chapter 1, Wolters Kluwer, 2022
- Finance & Accounting for Lawyers, 2nd Edition, BVR. Available at bvresources.com
- AICPA Practice Aid 06-3, "Analyzing Financial Ratios," 2006, American Institute of Certified Public Accountants, www.aicpa.com

Benchmarking data sources

- Subscription services: CapitalIQ, Factset, Bloomberg, Pitchbook
- Integra (www.microbilt.com)
- RMA, www.rmau.org

Curriculum Development Team

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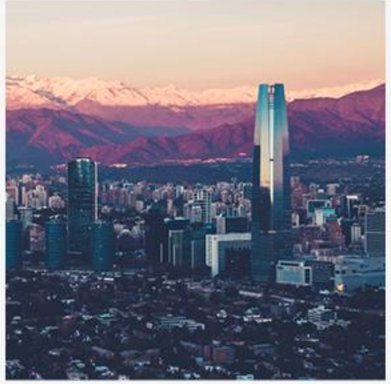

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INTA CERTIFICATE PROGRAM

COURSE:

Time Value of Money

Chapter 4

INTA International Trademark Association

Our Instructors

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Intellectual Property valuation and damages expert. 30-year career in valuation, finance, banking, M&A advisory and litigation consulting.

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Business valuation expert, Closely-held company valuations, M&A, Forensic and investigative accounting

Chapter Overview

Topics Covered:

- Time Value of Money
  - Factors influencing value of money
- Net Present Value (NPV)
  - Discount factor
  - Perpetuities
  - Annuities
- Uses of NPV
- Sources on NPV + Quiz

At the end of this session, attendees should be able to…

✓ Explain the concept “Time Value of Money”

✓ Identify appropriate metrics/inputs for estimation NPV

✓ Estimate Net Present Value

What is “Time Value of Money” and Why is it Important?

Time Value of Money

A rational individual will prefer certain money now rather than uncertain money in the future. This is known as the **“time value of money”.**

The perception of time value of money is influenced by

- Opportunity costs – other possible investments that yield returns in future
- Risk that an investor is willing to accept
- Inflation – decline in the purchasing power of a unit of currency (e.g., $1)

Economic benefits can be any form of profit, cash flow, or payment

For a trademark license, the economic benefit would be the royalty the trademark owner expects to receive from the licensee

Time Value of Money Formula

The Formula

$$\text{PV} = \sum_{t=1}^{n} \frac{FB_t}{(1+DR)^t}$$

Term	Definition
PV	The present value of all future benefits (FB).
FB	Future benefits – those earnings, profits or cash flows expected to be achieved at a future period (t).
t	The time period during which the future benefit is expected.
DR	Discount Rate – the rate used to convert a future benefit amount to a present value. Represents the risk and probability the expected future benefit will not occur as expected.

Sample Calculation

	Years				
Period:	*1*	*2*	*3*	*4*	*5*
Cash Flow	$200	$300	$400	$500	$600
Discount Period:	1.0	2.0	3.0	4.0	5.0
Discount Factor:	0.833	0.694	0.579	0.482	0.402
Present Value:	$167	$208	$231	$241	$241

Discount Rate: 20.0%

Sum of Present Values: **$ 1,089**

Future Value – Example 1

Suppose, a company has $1,000 now. If the annual discount factor is 8%, the value of the comparable asset *in one year* will be

Future Value_1 = $1,000 * (1+0.08) = $1,080

In two years

Future Value_2 = $1,000 * (1+0.08)* (1+0.08) = $1,000 * $(1.08)^2$ =$1,166.40

In five years

Future Value_5 = $1,000 * $(1.08)^5$ = $1,469.33

In T years

Future Value_T = $1,000 * $(1.08)^T$

Excel Example – Using Excel for Time Value of Money Calculations

Future Value Calculation - Single Payment			
Present Amount		$300	*The payment expected in the future*
Years until benefit		2.0	*Time period until the payment is received*
Expected Return		15.0%	
Factor		1.32	*Factor to increase present value at expected rate of return: F = (1+r)^t*
Future Value		**$397**	

Excel Exercise #1:
Use the file Excel Exercises Session 4, at tab PV:

Use Excel formulas to complete the highlighted cells

Excel Example – Using Excel for Present Value

Present Value Calculation - Multiple Payments & Periods					
	Years				
Period:	*1*	*2*	*3*	*4*	*5*
Future Benefit	$200	$300	$400	$500	$600
Discount Period:	1.0	2.0	3.0	4.0	5.0
Discount Factor:	0.833	0.694	0.579	0.482	0.402
Present Value:	$167	$208	$231	$241	$241
Discount Rate:	20.0%		Sum of Present Values:		**$ 1,089**

Excel Exercise #2:
Use the file Excel Exercises Session 4 to:

A. Recreate this table
B. Determine the impact of a switch from End of Period Discounting to Mid-Period Discounting
C. Determine the impact of changing discount rate to 15%

Pro-tip:

Selection of an appropriate Discount Period is important. The Discount Period should reflect when Future Benefits will be received.

- Use 1.0, 2.0, etc. when 100% of future benefit will be received on last day of the period (**End of Period Discounting**)
- Use 0.5, 1.5, 2.5, etc. when future benefits will be received evenly throughout the period (**Mid-Period Discounting**)

Time Value of Money – Calculating Future Values

The Formula

$$FV = PV * (1+DR)^t$$

Term	Definition
PV	Present value, or the known amount today
FV	Future Value, the amount the PV will grow to at the expected rate of return (DR) at the end of period (T)
t	The time period during when the future benefit is expected to be received
DR	Discount Rate, or expected rate of return – the rate used to convert a present value to a future value. Represents the risk, expected growth and probability the expected future benefit will not occur as expected

Calculating Future Values uses the same formula – rearranged using algebra

Future Value Calculation - Single Payment			
Present Value		$300	
Years until benefit		2.0	
Discount Rate		20.0%	
Future Value		**$432**	

The Time Value of Money Formula considers "**compounding**"

$300 x 20% = $60

$300 + $60 = $360

$360 + $60 = $420

Time Value of Money – ROI and NPV Calculations

Present Value Calculation - Investment and Future Benefits						
Date	31-Dec-20	31-Dec-21	31-Dec-22	31-Dec-23	31-Dec-24	31-Dec-25
Years	*0*	*1*	*2*	*3*	*4*	*5*
Investment	($1,000)					
Future Benefit		$200	$300	$400	$500	$600
Discount Period:	0.0	1.0	2.0	3.0	4.0	5.0
Discount Factor:	1.000	0.811	0.658	0.534	0.433	0.351
Present Value:	($1,000)	$162	$197	$213	$216	$211
Total Investment	($1,000)			Discount Rate:		23.3%
Total Future Benefits	$2,000			Sum of Present Values:		**$ (0)**

Application of the Time Value of Money

Compare an investment amount today to expected future benefits

The Discount Rate that makes the Present Value of the Investment and Future Benefits = $0 is the **Implied Rate of Return** for the Investment.

Excel Exercise #3:
Use the file Excel Exercises Session 4 to:

A. Change the Investment Amount in Year 0 to $750
B. Recalculate the ROI if the Investment is $750

Estimating the Discount Rate

Discount Rate Terminology

Capital Asset Pricing Model (CAPM)

Build Up Model

WACC: Weighted Average Cost of Capital, is term frequently used to describe the discount rate used to value future benefits at a business. WACC is the value-weighted cost of debt capital (borrowings) and equity capital (stock)

Information sources for discount rates

- Federal Reserve (fred.stlouisfed.org)
- Bvresources.com: sub.bvresources.com/riskfreerates.asp
- Cost of Capital Navigator (kroll.com)
- Microbilt.com
- Pepperdine Cost of Capital Survey: bschool.pepperdine.edu/privatecapital

Discount Rate Models

CAPM: $DR = Rf + RPm(\beta) \pm RPs$

Build-up: $DR = Rf + RPm \pm RPs$

Term	Definition
DR	Discount Rate, expected (market required) return for investment in an asset or business
Rf	Expected return for a risk-free security (the "Risk Free Rate")
RPm	Risk premium for the Market, expected return for securities in a comparable market
β	Beta Coefficient. Observed security price volatility relative to the "market"
RPs	Security-specific risk premium, additional factors specific to the Subject Asset or Business being valued (size, life-cycle, key-person, product concentration, etc.)

Further Reading / Reference Materials

- “The Time Value of Money and Net Present Value.” Corporate Finance, John Wiley & Sons, Ltd, 2017, pp. 267–83, https://doi.org/10.1002/9781119424444.ch16.
- CFA Institute, Valuation Handbook – International Guide to Cost of Capital, 2021: https://www.cfainstitute.org/en/research/foundation/2021/igcc-2021-summary-edition
- “The Time Value of Money: Discounting and Net Present Values.” Lessons in Corporate Finance, John Wiley & Sons, Inc, 2016, pp. 287–302, https://doi.org/10.1002/9781119228899.ch13.
- Arnold, Tom, and Terry Nixon. “Measuring Investment Value: Free Cash Flow, Net Present Value, and Economic Value Added.” Capital Budgeting Valuation, John Wiley & Sons, Inc, 2011, pp. 57–77, https://doi.org/10.1002/9781118258422.ch4.

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COURSE:

Brand & IP Valuation

Chapter 5

INTA International Trademark Association

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Intellectual Property valuation and damages expert. 30-year career in valuation, finance, banking, M&A advisory and litigation consulting.

Brian M. Daniel, ASA, CFA, CLP
Charles River Associates, Chicago, IL, USA

Intellectual property valuation, business valuation, and economic damages expert with 27+ years of experience.

Session Overview

Topics Covered:

- Valuation Terminology
- Brand Valuation Standards (ISO)
- Valuation v. Evaluation
- Standard Valuation Approaches (Cost, Income, Market)
- Forecasting Future Benefits
- Valuation Examples: RfR, Excess Earnings
- Common Mistakes in Valuation
- Quiz / Knowledge Test

By the end of this session, attendees should:

✓ Know the basics of valuation, including awareness of brand and IP valuation standards

✓ Understand the differences between the standard valuation approaches and how each approach is applied in valuation of Brands and IP

✓ Understand key considerations for forecasting future benefits

✓ Know the basics of common IP valuation approaches (RfR and Excess Earnings)

✓ Be aware of common mistakes in valuation

Intro | Valuations | 3 Approaches | Forecasting/Analysis | Red Flags | Additional Resources

Valuation Terminology - Premise of Value

Premise of Value — an assumption regarding the circumstances that may be applicable to the subject valuation. See also **Going Concern Value** and **Liquidation Value**.

Source: International Valuation Glossary – Business Valuation – Updated February 24, 2022

Valuation Terminology - Standard of Value

Standard of Value — the definition of value used in a valuation (e.g., **Fair Market Value**, **Market Value**, **Fair Value**, or **Investment Value**). The **Standard of Value** affects the methods, inputs, and assumptions used by the business valuation professional.

Source: International Valuation Glossary – Business Valuation – Updated February 24, 2022

Valuation Terminology - Royalty

Royalty — payment (hypothetical or actual) made for the use of an asset, especially an **Intangible Asset** or a natural resource.

Source: International Valuation Glossary – Business Valuation – Updated February 24, 2022

Valuation Basics – Standard Approaches

Approach	Standard Methodologies	Applicability for IP Assets
Cost	**Cost to Replace or Replicate** • Past investments & expenses to develop and create • Likely investment & expense to replicate	Accounting systems may not record/track expenditures specific to IP Assets Cost to create or replicate may be unrelated to expected benefits of owning/using the IP Asset
Market	**Study of Transactions** • Guideline companies • Guideline transactions • Industry benchmarks	Few IP Assets are bought or sold without other assets - no useful guideline transaction data Does not measure economic benefits achieved by user of the IP Asset, only what other parties have paid for "comparable" assets
Income	**Present Value (PV) of Future Benefits** • Relief from Royalty (RfR) • Discounted cash flows (DCF)	RfR: measures benefits generated from users other than the owner of the IP Asset (the "Licensee") DCF: measures the portion of reported benefits contributed by the IP Asset to the business using the IP Asset

Two typical methods: Profit Apportionment & Relief from Royalty

Valuation Basics – Cost Approach

- R&D (labor, material, overhead)
- Testing and regulatory approval costs
- Fees for contracted outside services
- Patent protection costs
- Equipment and other capital investments
- Opportunity costs of diverted resources
- Sub-optimal final product / process value because of patent ‘work around’ constraints
- Costs of delayed market entry
- May also be appropriate to consider other cost elements involved in bringing the replacement asset to the same level of economic performance as the original asset at the time of valuation
  - Lost sales and profits during development period
  - Incremental marketing and promotional expenses to secure comparable market position

Valuation Basics – Market Approach

Nature of IP Asset

- Scope and status of legal protection
- Geographic relevance (local, regional, global)
- Risks

Company Structure

- Industry
- Market size and characteristics
- Growth outlook for relevant products
- Channels of distribution

Barriers to Entry

- Legal
- Economic
- Regulatory
- Political
- Other

Relative Balance of Power between Parties

- Market Size
- Market Share

Terms of Agreements, e.g.

- Field of use restrictions
- Payment structure
- Exclusivity
- Territory
- Timing
- Duration
- Other

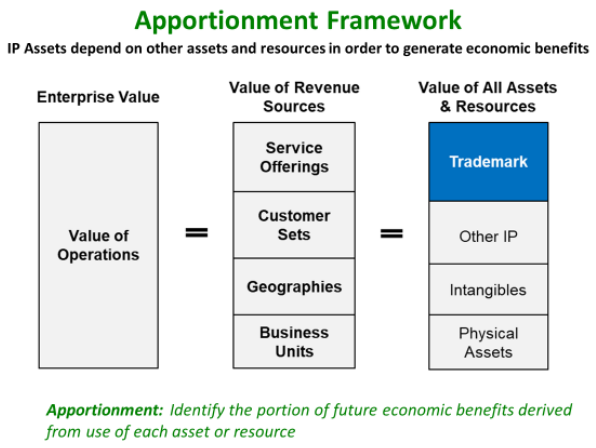
Valuation Basics – Income Approach

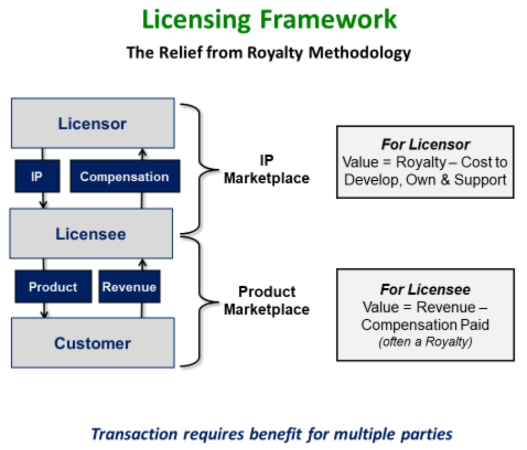
For Brand and IP Valuation, 2 typical methodologies:

1. Excess Earnings / Apportionment: Present value of future benefits generated by the subject IP asset. Calculate the portion of business earnings contributed by the IP asset.

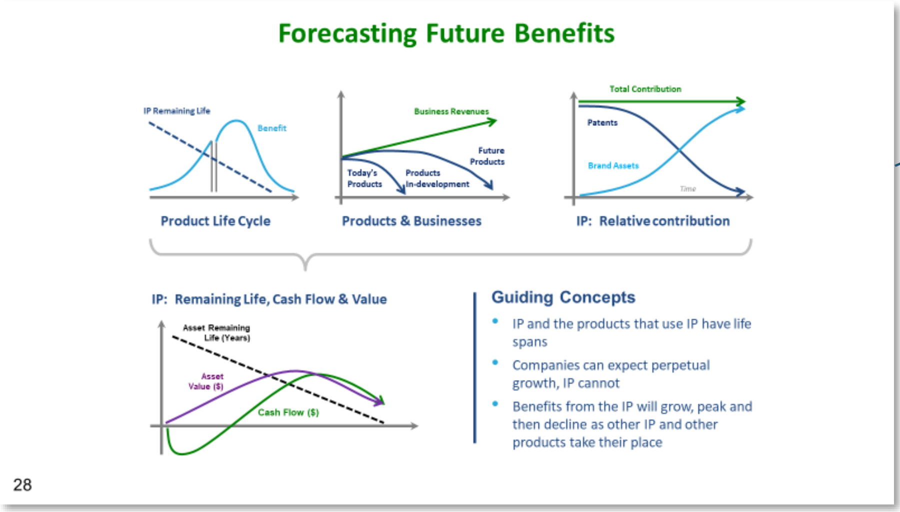
2. Relief from Royalty: Present value of future benefits if the subject IP asset is the subject of a hypothetical license transaction. Calculate the royalty the IP user would receive if licensing the IP asset from another party.

Each methodology requires a forecast of future economic benefits contributed by the IP asset

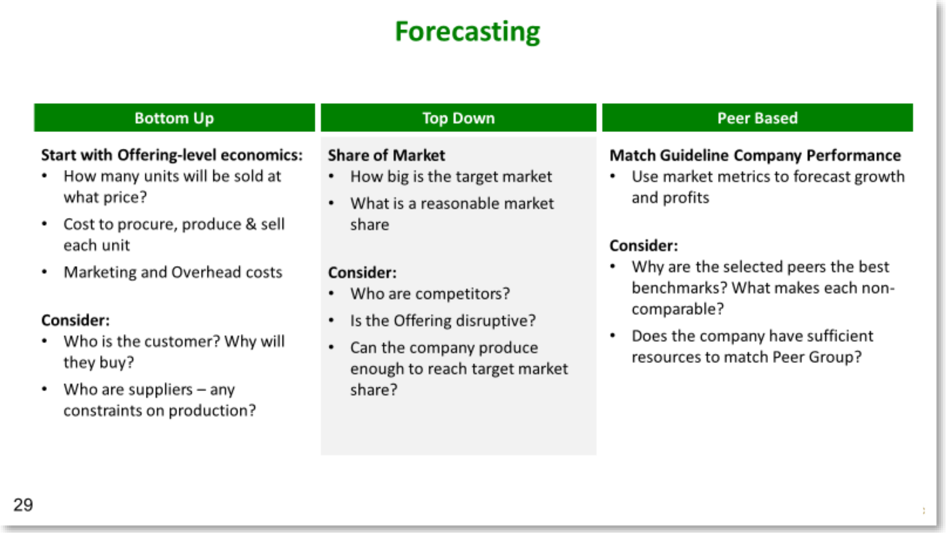




Valuation Basics – Forecasting



The contribution of any IP Asset to business cash flows will evolve with the business. Business may exist into perpetuity, but contribution of IP assets typically declines over time.



Bottom Up	Top Down	Peer Based
Start with Offering-level economics: • How many units will be sold at what price? • Cost to procure, produce & sell each unit • Marketing and Overhead costs **Consider:** • Who is the customer? Why will they buy? • Who are suppliers – any constraints on production?	**Share of Market** • How big is the target market • What is a reasonable market share **Consider:** • Who are competitors? • Is the Offering disruptive? • Can the company produce enough to reach target market share?	**Match Guideline Company Performance** • Use market metrics to forecast growth and profits **Consider:** • Why are the selected peers the best benchmarks? What makes each non-comparable? • Does the company have sufficient resources to match Peer Group?

Forecasting contribution provided by IP assets starts with the business level forecast. Availability of relevant information will dictate ability to use Bottom-up, Top-down or Peer-based forecast methodology

Valuation Basics – the Valuation Analysis

Relief from Royalty Valuation

1. Use business analysis and market transaction research to estimate the future royalty and license compensation
2. Discount the expected future license benefits to a present value
3. Consider cash flows at both Licensor and Licensee

Relief from Royalty Example

Period		*0*	*1*	*2*	*3*	*4*	*5*
Forecast Licensee Sales		1,000	1,300	1,495	1,645	1,727	1,761
Growth Rate			*30%*	*15%*	*10%*	*5%*	*2%*
Annual Royalty Rate			*8%*	*8%*	*8%*	*8%*	*8%*
For IP User (Licensee)							
Up-front payment		(50)					
Annual Fee			(5)	(5)	(5)	(5)	(5)
Additional Profit Margin			*15%*	*20%*	*15%*	*10%*	*5%*
Additional Profits		-	195	299	247	173	88
% of Sales Royalty		-	(104)	(120)	(132)	(138)	(141)
Total Benefits		(50)	86	174	110	30	(58)
Present Value @	*25%*	(50)	69	112	56	12	(19)
Value of IP to Licensee		**180**					
For IP Owner (Licensor)							
Up-front payment		50					
Promotions Commitment			(130)	(150)	(82)	-	-
Promotions Commitment %			*10%*	*10%*	*5%*	*0%*	*0%*
Annual Fee			5	5	5	5	5
% of Sales Royalty			104	120	132	138	141
Total Benefits		50	(21)	(25)	54	143	146
Present Value @	*20%*	50	(18)	(17)	31	69	59
Value of IP to Licensor		**174**					

Excess Earnings Analysis

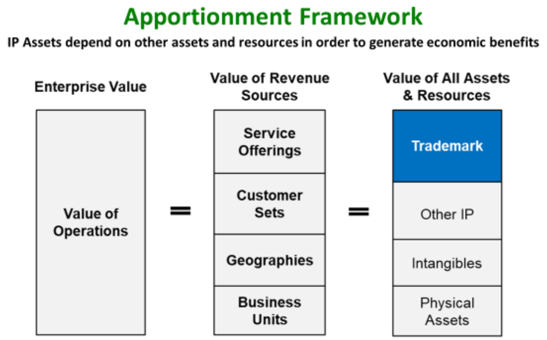
Valuation Using Excess Earnings / Apportionment

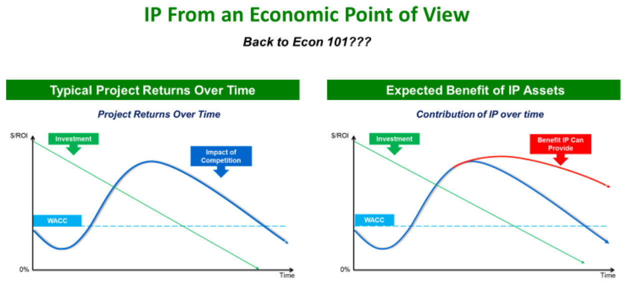
- Identify how and when the IP asset is creating cash flows for the business
- Understand the other assets (tangible and intangible) also contributing to cash flows
- Cash flow contributed by the Subject Asset must be <100% of total cash flow

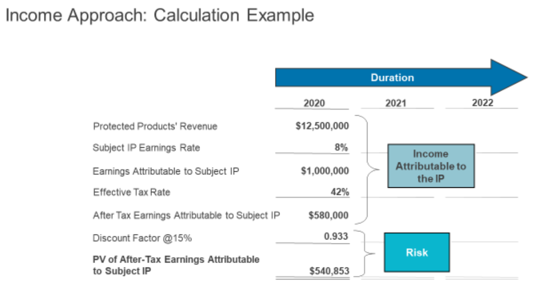
How IP Contributes to Value

Monopoly	Barrier to entry, exclude others from using	• Pricing power • Greater profit margins
Litigation	Seek damages if others use	• Litigation award (PV of award less costs) • Threat of litigation (force "Monopoly" or "Permission")
Permission	Ability to be compensated when others use	• Value of license (PV of royalties+fees – costs) • Value if sold
Promotion	Signals innovation, uniqueness, source of origin to consumers	• Additional sales • Reduced marketing • Incremental margin

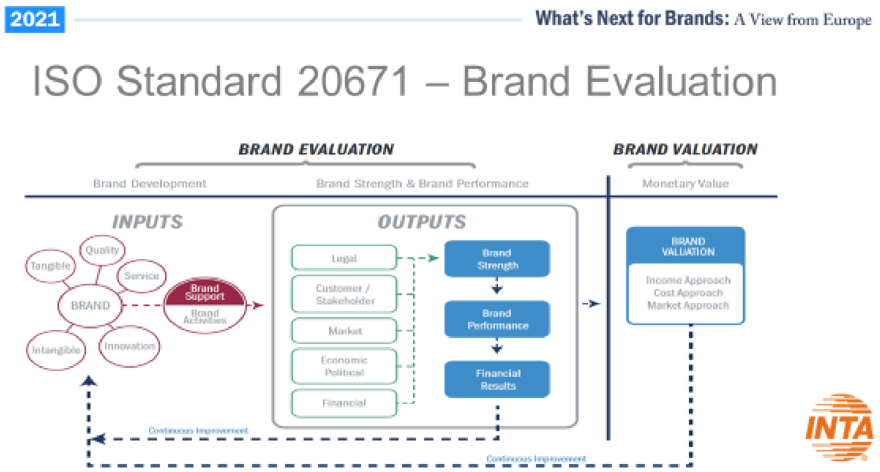
Value is Derived From the Economic Benefits Created







Supporting the Valuation Calculations



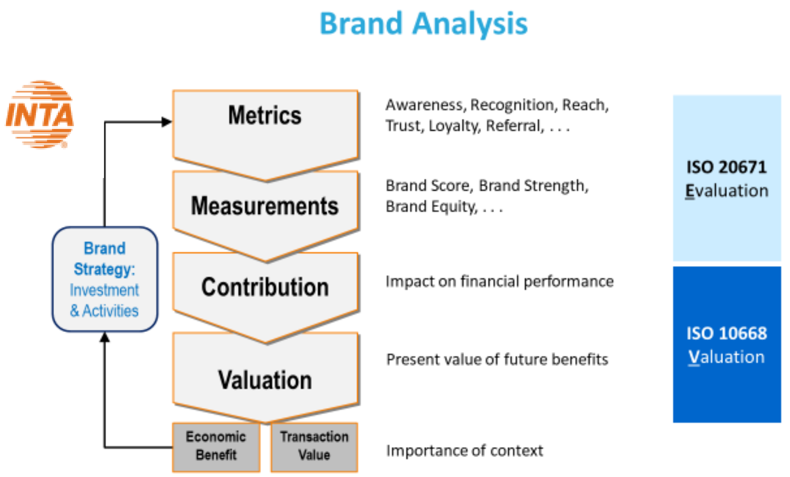
Sources of Comparable IP Licensing Transactions

- Private transaction details may be available from the IP owner seeking the valuation or available through discovery in litigation
- Public transaction details are available through searchable databases of public licenses and sale agreements such as:

RoyaltySource · RoyaltyStat · ktMINE

- Sources for life science royalty rates include:

Medtrack · RECAP · LES



No shortage of techniques & terms

Red Flags for Untethered Valuations

- Analysis has not clearly identified the Valuation Date, valuation context and purpose of the valuation assignment
- Forecast incorporates unreasonable assumptions regarding business performance
- The Subject IP asset will contribute to cash flows into perpetuity (forever)
- The subject IP asset is valued at an amount greater than the business using the subject IP asset
- Cost, Income and Market approaches yield disparate results without explanation

Resources

ISO 10668 – Brand Valuation: Has the valuation analysis addressed the considerations presented in this Standard publication?

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Copyright Language

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COURSE:

Acquisition and Financing

Chapter 6

INTA International Trademark Association

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Chapter Overview

- What are mergers and acquisitions (M&A)
- What are typical M&A transactions
- What does the M&A lifecycle look like
  - Pre-deal
  - Due diligence
  - Review
  - Financing
  - Execution
  - Post-merger

At the end of this Chapter, attendees should know…

- ✓ The importance of M&A
- ✓ Differences between M&A transactions
- ✓ Types of financing options

Introduction

Mergers and acquisitions are transactions that allow companies to combine businesses (merger), or buy ownership (acquisition) of companies, business units, or specific assets

What	• The buying or selling a business, asset, or an entire company • Generally applicable to all companies (private and public) • Must comply with competition law (antitrust law)
Why	• May be opportunistic (buying an undervalued asset), strategic (acquiring a new/synergistic capability), or may allow a company to grow faster by acquiring competitors • Seller may benefit by cutting an unprofitable business, removing dis-synergy, or making a profitable exit
Who	• Target: the asset, company or business being sold • Seller: the seller is the current owner of the target. May be a private owner, public shareholders, or a firm selling a business or asset (divestiture) • Purchaser/Buyer/Acquiror: the party that will be making the acquisition. Can be an individual, company, financial buyer such as a private equity (PE) group, family office, etc.

Common Types of M&A

Merger

Acquisition

Management Acquisition / Management Buyout (MBO)

Leveraged Buyout (LBO)

Consolidation

Key Learnings

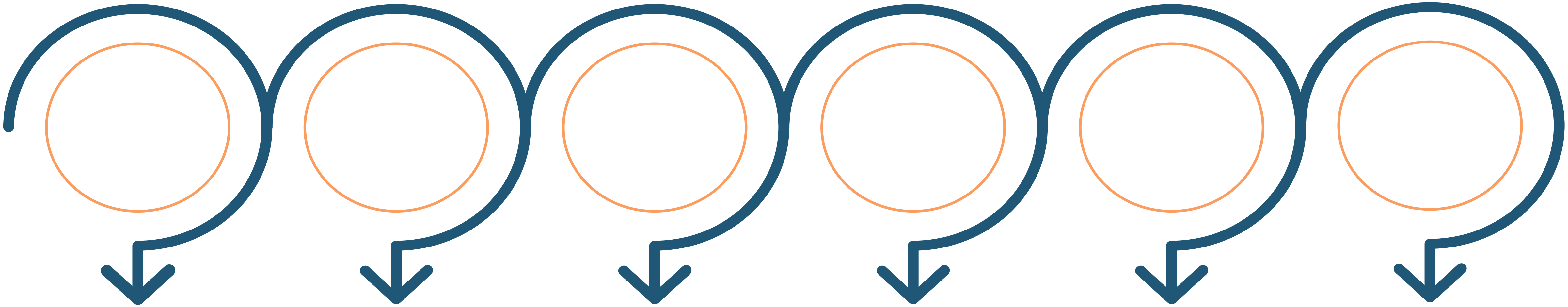
M&A transactions allow the consolidation of companies or assets through various types of financial transactions.

1. M&A deals can vary in complexity, the simplest transactions can close with a buyer, seller and a lawyer, while most complex deals include participation from dozens of parties, and potential antitrust considerations.

2. In an MBO transaction the company's executives purchase a controlling stake in another company, taking it private. These former executives often partner with a financier or former corporate officers to help fund a transaction.

3. An LBO transaction refers to the acquisition of another company using a significant amount of borrowed money (bonds or loans) to meet the cost of acquisition.

M&A Lifecycle



Pre-deal: Strategy, Screening, and Solicitation

Due diligence

M&A review

M&A financing

Merger and consolidation execution

Post-merger

Pre-Deal Decisions and Process

Strategy

- Establish a corporate strategy to identify and evaluate strategies to achieve organic and inorganic growth (through M&A)
  - New markets or new products
- Assess capabilities to complete an M&A transaction
- Establish accountability for the M&A process within the organization

Screening

- Define acquisition criteria to apply to the list of potential target companies
- Collect data on potential target companies and evaluate potential strategic fit and value proposition
- Plan pre deal integration and complete initial diligence on the potential target companies
- Perform valuation of business entities, financial modeling, and assess challenges

Solicitation

- Engagement and retention
  - Investment banks (IB)
  - Accounting firms
  - Law firms
  - Professional services firms
- Review potential M&A transactions
- For private equity (PE) firms: maintain constant contact with IB's that feed a continuous pipeline of potential deals

A letter of intent (LOI) in M&A is a written, non-binding document which outlines an agreement in principle for the buyer to purchase the seller's business, stating the proposed price and terms. The mutually signed LOI is required before the buyer proceeds with the due diligence step.

Types of Due Diligence

Due diligence is a systematic examination of a business ahead of an event such as a merger, acquisition, capital raise, IPO or audit. Due diligence is completed before a deal closes to provide the buyer with an assurance of what they're getting

Financial due diligence	Commercial due diligence	Product Technology, Enterprise IT and Cyber due diligence
IP due diligence	Tax due diligence	HR due diligence
Trademark due diligence	Operational due diligence	Other (Regulatory, Environmental, etc.)

IP Due Diligence

IP due diligence is essentially an audit to assess the quantity and the quality of intellectual property assets owned by, or licensed to, a company, business or individual. It should also include an assessment of how intellectual property is captured and protected by the relevant company or business

- **Present IP analysis (both counterparties) / Patent refresh**
- **Historical IP infringement / Litigation sweep**
- **Trade secrets filing**
- **Third-party IP**
- **Joint venture analysis**

Brand & Trademark Due Diligence

Trademark due diligence, a type of IP due diligence, is the process of digging into a company's trademark portfolio and assessing the state, risks, benefits, and liabilities associated with a proposed M&A transaction

- **Current trademark and brand review**
- **Ownership and assignment analysis**
- **Unregistered trademarks**
- **Research on current trademark disputes**
- **3rd party licenses**

Commercial Due Diligence

Commercial due diligence is a step-by-step process that determines the overall value that can be generated from an M&A or an investment in another company

Internal	External
Company overview	Market / regulatory environment & addressable opportunity
	Competitive landscape & company differentiation
Company organizational structure	Pipeline / Sales / Customer analysis
	Organizational synergies

Other Types of Due Diligence

Tax Due Diligence	Tax due diligence is an investigation of the various taxes that may be imposed upon a particular business or what they may be liable for, as well as the taxing jurisdictions in which it may have sufficient connection to be subject to such taxes
Tech/IT Due Diligence	IT due diligence involves assessing a company's revenue-generating technology products, processes, and potential security gaps to determine any gaps involving pre- and post-M&A integrations
Operational Due Diligence	Operational due diligence assesses the allocation of resources of a company's operations including processes, supply chain, facilities, etc., whether operational synergies or bottlenecks exist in a transaction, and if there are operational risks that should be addressed
HR Due Diligence	HR due diligence analyzes the human capital within both the target and acquiror company as well as all its surrounding policies/procedures to determine best fit across the combined organization
Financial Due Diligence	Financial due diligence on the buy-side aims to ensure that the target company's financial situation is as healthy and prospective as you would want it to be as an acquiror

Key Learnings

It is important to consider the M&A strategy and perform a robust due diligence process

1. Due diligence is comprehensive appraisal of a business undertaken by a prospective buyer, especially to establish its assets and liabilities and evaluate its commercial potential

2. Brand and trademark due diligence will be an important step of the due diligence process when the target's value depends on brand and trademark IP

3. Other areas of due diligence include financial, tech / IT, commercial, and more.

M&A Review Process

For large M&A transactions parties may not complete the transaction until it undergoes a review process by the relevant government authority

Regulation	• In the United States (Hart-Scott-Rodino Act) and the European Union (Council Regulation (EC) No 139/2004) parties to certain large mergers and acquisitions must file premerger notification and wait for government review

Filing	• Not all M&A transactions require premerger filing
	  • Deals must have a minimum value and the parties must be a minimum size
	  • Some stock or asset purchases are exempt, as are purchases of some types of real property

Review	• The government antitrust agency will complete a detailed review and analysis of the deal for effects on competition
	  • As part of this process financial and other information may be requested from both parties
	  • The review process can take several months to complete depending on the government authority
	• The Committee on Foreign Investment in the United States (CFIUS) has the authority to review any transaction that results in foreign control of a US business
	• In the EU, screening by EU Member States of foreign takeovers and investments following a significant increase of foreign direct investment into European technology assets

Primary Considerations for Financing a M&A Transaction

Primary funding means

Cash *From acquiror and / or target company*	**Debt Financing**	**Issuance of Acquiror Stock** *For cash proceeds or to exchange for target company stock*

The following considerations determine the allocation of the primary funding means

1. Free Cash Flow (including operating synergies from combined companies)
2. Capital Structure
3. Equity Market Valuations

Free Cash Flow

Impact of free cash flow on merger financing

- Free cash flow: the cash a company generates after accounting for cash outflows to support operations and maintain its capital assets
- Sufficient free cash flow allows for adequate debt servicing and is non-dilutive to equity holders
- Most acquiring companies want to preserve their investment grade debt rating on a combined basis (if investment grade)

Higher free cash flow of combined companies → **Higher probability of using debt to fund a portion of the transaction**

Capital Structure

Capital structure determines whether the acquiror can fund the M&A with cash, and may affect the ability to raise debt funding

Cash not used to run operations can be used to fund the transaction

Considerations:

1. How much cash is on th to run operations?

Debt issuance may be limited by existing lender covenants that set a restriction on the amount of debt the firm can assume

2. Debt
   - What is the current debt on a combined basis?
   - Does the target's debt need to be contractually paid off in an acquisition?
   - Is the acquiror willing to accept a lower credit rating?

A change of control clause may require the acquirer to make payment on the target company's debt

If so, acquiror can potentially fund a larger portion of the transaction with debt

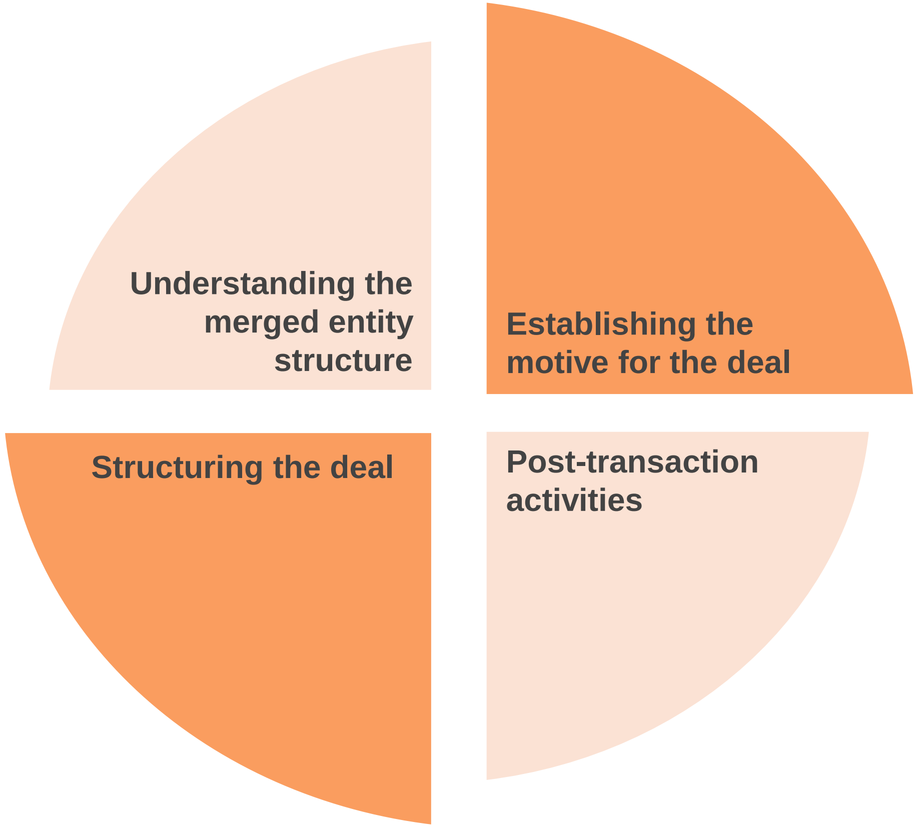
Equity Valuations

The acquiror prefers to use stock as the primary funding mechanism when some or all of following are true:

1	Acquiror is a public company and believes their stock is fairly or highly valued
2	The combined companies are projected to be accretive or neutral to earnings and / or cash flow so additional stock issuance will not dilute existing shareholders
3	Lack of other options: if the company doesn't have cash on hand and can't raise enough debt, stock is the remaining option

Merger and Consolidation Execution

Finalization of:
- New entity name and headquarters
- Leadership structure and new CEO
- Board of directors
- Strategic mission
- HR capabilities



Common motives:
- Complementary product / service lines
- Complementary regional presence
- Ability to create economies of scale / scope
- Complementary operations
- Synergies in different niches

- Mergers usually involve larger equity portion
  - Results in relinquishing more control
- Due diligence used to establish how much value each party brings to the merged entity
- Usually new legal entity is formed

- Both parties make compromises to set deal plans in action
- Both companies undergo implementation of change management program

Merger and Consolidation Execution

What are the procedures?

- Board of directors and shareholders of each company must approve the deal
- Plan must be filed in accordance with state / county laws
- Certificate of merger must be acquired

Shareholder rights

- A shareholder that votes against the M&A transaction is not required to accept the shares in the surviving or successor corporation
- The shareholder can exercise his/her **appraisal rights:**
  - Right to the shares owned in the pre-merger or pre-consolidation corporation appraised value; and
  - Right to be paid at the fair market value of the shares

Post-Merger / Post-Acquisition

Post-Merger Integration (PMI) is the process of combining and rearranging businesses to materialize potential efficiencies and synergies during an M&A

Objectives for PMI

1. Maintain momentum in ongoing businesses
2. Maximize and accelerate synergies and value creation
3. Build the organization and align the cultures
4. Use the combined capabilities to advance the company's competitive position

Key steps in PMI

- **Synergy realization**
- **Functional planning & execution**
- **Organizational structure & talent retention**
- **Program management**
- **Change management & communications**

Key Learnings

1. The real work of a merger or acquisition begins once the transaction has closed. This is the time to actualize whether the merger / acquisition will be dilutive or accretive by creating value through synergies, new market reach, cost cuttings from economies of scale, etc.

2. Financing a merger / acquisition involves determining the appropriate mix of cash, debt, and equity to be used. This is based on several key factors of both companies.

3. The execution of an M&A transaction and the PMI process involve understanding how to capture synergies of the combined entities and making decisions on the organizational structure.

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The Financial Aspects of Licensing

Chapter 7

INTA International Trademark Association

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Chapter Overview

1 Defining Terms

2 Royalty

Base Rates

Alternatives to royalty (revenue share)

5 Brand Resources

3 Licensee Commitments

Upon signature and launch/set up

Design, advertising and marketing

4 Securing Payment

Forecasting and inventory reporting; audits

Termination

Letter of credit

Liquidated damages

6 Quiz

By the end of this Chapter, attendees should understand:

1. Key Financial Terms
2. Royalty Rates
3. Anti-competitive Laws and Rules
4. Licensee non-royalty financial commitments
5. Techniques for Securing Payment

Defining Terms

Gross / Net Sales

Gross / Net Profit

Wholesale / Retail Prices

Suggested Retail Price

Minimum Guarantee

Contingent Payment

Gross Sales

Revenue received for Licensee sales
based on the gross invoice amount
of Licensed Products/Services sold using
Licensee's standard wholesale prices

Net Sales

Gross Sales, ***less***:

Bona fide returns/credits

Discounts/markdowns

Taxes and other deductions, e.g., freight charges, duties

Gross Profit

Net Sales, ***<u>less</u>*** fully allocated costs
using Generally Accepted Accounting Principles (GAAP)

Net Profit

An amount equal to Gross Profit, ***less***
additional unallocated costs associated with sales of Licensed Products/Services, e.g., advertising, marketing, promotion, labor

Wholesale Price

Prices for Licensed Products/Services sold
from the manufacturer (licensee) to licensor/retailer/customer

Retail Prices

Prices for the Licensed Products/Services
sold from the retailer to the end user customer

Suggested Retail Prices

A suggested price range, or a minimum/maximum price for Licensed Products/Services

Minimum Guarantee

The minimum amount of sales and/or royalties required

“MGS” refers to Minimum Guaranteed Sales
“MGR” refers to Minimum Guaranteed Royalty

Contingent Payout

A payment obligation by licensee to licensor that is triggered by an event, e.g., a transfer fee, termination fee, audit fee

Royalty: Base

Different Base Approaches

Different Payment Structures

Royalty: Base

Different Base Approaches

- % of Gross/Net Sales
- % of Gross/Net Profit
- % of Wholesale/Retail Prices

Royalty: Base

Different Payment Structures

- Monthly/Quarterly/Annually
- Minimum Guarantees – Sales/Royalty
- Contingent Payment
  - Transfer Fee
  - Audit Discrepancy
  - Termination Fee

Royalty: Base – Sample Provision

Licensee shall pay Licensor a royalty equal to the percentages of the Net Sales (the "Royalty" or "Royalties") in each Year as follows:

X% on all sales up to _____ percent (____%) of MGS

Y% on all sales above ______percent (_____%) of MGS

Z% on all sales above __________ percent (____%) of MGS

Royalty percentages shall reset at the start of each Year during any Term, and the variable royalty rate structure set forth herein shall apply during each Year

Royalty: Tax Matters

Withholding Tax

- Seek tax advice to determine whether royalties and other payments from the licensee are subject to any requirement to deduct any tax in the licensee source country.
- Licensor wants to ensure that the net value of royalties is not reduced by any tax deduction that it cannot claim a credit or refund for in its home tax jurisdiction.
- Licensor may seek a so-called 'gross up' clause designed to ensure that the amount it receives is the same it would have expected to receive if there was no withholding requirement.
- Licensee may seek to deduct withholding tax if the Licensor can receive a tax credit.

Royalty: Tax Matters

Sales Tax

- The trademark licensed rights may trigger a sales tax, e.g., VAT(value added tax)/sales taxes.
- Licensor may mandate the addition of sales tax to royalty invoices; ensure that the licensee is obliged to pay such sales taxes in addition to the principal amount of royalties.

Royalty: Pricing

Minimum Advertising Pricing (MAP) Policy

A pricing policy that is **unilaterally set by the licensor or licensee** that mandates retailers/resellers not to advertise the price of a specific product(s) below a set price(s).

Licensee shall not sell Licensed Products to third parties who resell Licensed Products to any retail or ecommerce channel that is discount in nature and/or which does not adhere to the Licensor MAP Policy.
[Licensor/Licensee to insert applicable MAP Policy].

Licensee will take all necessary steps to enforce Licensor's MAP Policy, which sets minimum advertised retail prices in USD and shall be adjusted to account for local currency and taxes.

Royalty: Pricing

Minimum/Maximum Resale Price Maintenance (RPM) Agreement

An **arrangement where licensee agrees to product(s) prices that are at or above a minimum level/floor** (minimum RPM) or a maximum level/ceiling (maximum RPM).

Be aware of anti-trust/anti-competition laws when setting RPMs

Permitted Pricing Controls to Maintain Value in the USA

- Mandate publication of Suggested Retail Price – Quality Control
- Provide range of Suggested Retail Pricing
- Set higher Royalty Rates

New EU Vertical Block Exemption Regulation

- June 1, 2022 – effective date for new Vertical Block Exemption Regulation (“VBER”) and Guidelines on Vertical Restraints (“VGL”).

- VBER exempts from the prohibitions in Article 101(1) of the Treaty on the Functioning of the European Union (‘TFEU') agreements between companies that are active at different levels of the production or distribution chain, subject to conditions.

- VBER rules provide a safe harbor where certain agreements are block exempted.

New EU Vertical Block Exemption Regulation

Some basic principles regarding resale price

One hardcore restriction concerns resale price maintenance (‘RPM’), that is, agreements which, directly or indirectly, have the object of restricting the buyer’s ability to determine its sale price, including those which establish a fixed or minimum sale price to be observed by the buyer. A requirement for the buyer to set its sale price within a certain range is considered to be RPM.

BUT - the use of recommended resale prices or maximum resale prices can benefit from VBER under certain conditions.

Suppliers may set different wholesale prices for online and offline sales by the same distributor, as this may incentivize or reward an appropriate level of investments.

Manage Your Minimum Guarantees (MGR/MGS) to Maintain Value

1. Do NOT permit unauthorized sales to count toward MGR; BUT mandate payment of Royalty on such sales (don't forget to reserve your right to terminate too)

2. Allow for adjustment in MGRs/MGS each year/term

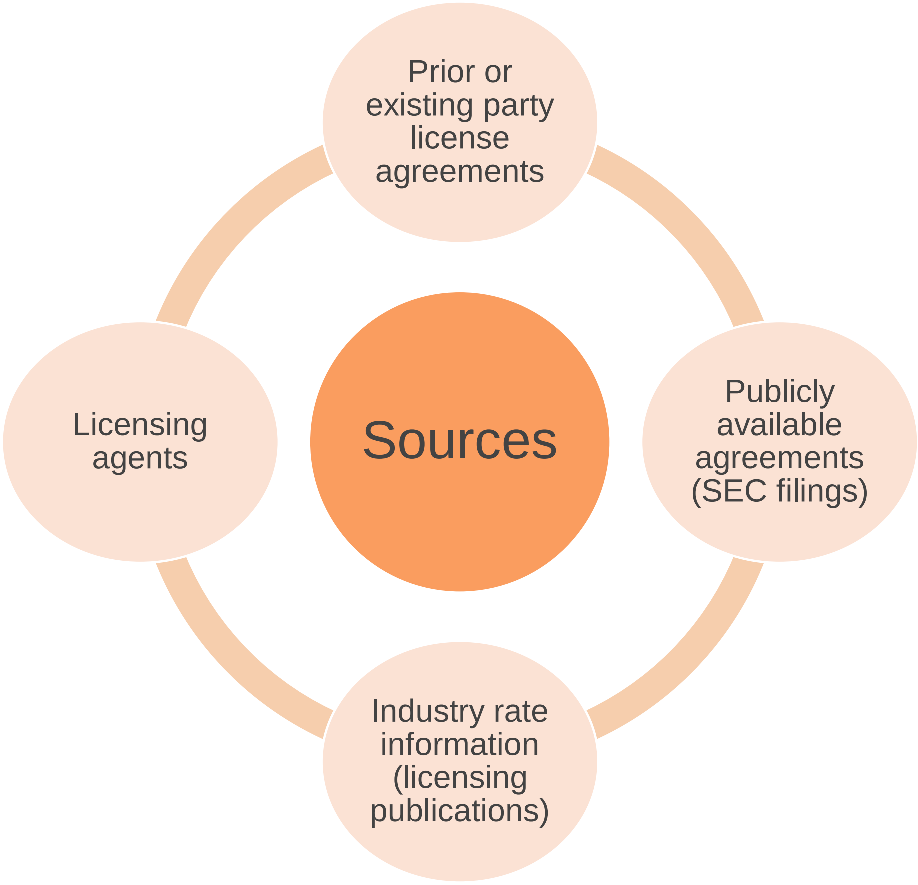
Address the Impacts of Discounting

1. Permit specified % of discounted sales to count toward MGR
2. Cap % of discounted sales; do not calculate Royalty owed on any discounted sales over the cap
3. Permit specified % of discounted sales to count toward MGR

Alternative Royalty Structure: Fixed Price Per Unit Example

	Target Price of $100	Price of $50 After Discounting
Royalty at 10% of Sales	$10	$5
Royalty as a % of Sales	10%	10%
Royalty at $10 Per Unit	$10	$10
Royalty as a % of Sales	10%	20%

Royalty: Sources for Determining Rates



Economic Advantages/Benefits of the Licensed Product/Brand

- Cost
- Availability
- Acceptability

Exhibit 2 Average Royalty by Property Type, U.S. & Canada, 2019	
Property Type	**Average Royalty, 2019**
Art	6.1%
Art and Artists	6.1%
Museums	6.1%
Celebrities	10.3%
Entertainers/Models	10.4%
Chefs/Home-related	9.7%
Collegiate	10.0%
Entertainment	10.2%
Estates	9.7%
Fashion	8.4%
Apparel	8.4%
Footwear	7.1%
Home	7.5%
Music	8.1%
Non-profit	8.2%

Note: Royalty estimates based on net wholesale price. Italics indicate subcategories.
Source: The Licensing Letter. Copyright 2020, Plain Language Media, LLP.

Exhibit 3
Average Royalty by Product Category, U.S. & Canada, 2019

Product Category	Average Royalty, 2019
Accessories	9.1%
Eyewear	8.3%
Handbags, Backpacks, Messenger Bags	8.9%
Headwear	9.9%
Hosiery	8.6%
Jewelry and Watches	7.8%
Luggage and Travel Accessories	10.0%
Scarves and Ties	7.3%
Apparel	9.7%
Consumer Electronics	5.3%
Domestics	9.0%
Food/Beverages	6.0%
Footwear	8.0%
Furniture/Home Furnishings	7.6%
Gifts/Novelties	8.7%

Note: Royalty estimates based on net wholesale price. Italics indicate subcategories.
Source: The Licensing Letter. Copyright 2020, Plain Language Media, LLLP.

Alternatives to Royalty

1. Revenue/Profit Sharing – joint venture or collaboration
2. Fixed Price per Unit
3. Royalty-free: Limited Circumstances

Royalty-Free: Limited Circumstances

- Brand Expansion/Extension
- Brand Promotion
- Test/trial run
- Short term license

Other License Commitments

Launch/Set Up: Upon execution

Usually credited toward MGR/royalty

Other License Commitments

Design Contribution

The **"Design Services Contribution"** is $ ________, payable to Licensor by Licensee upon signing this Agreement to reimburse Licensor's costs and fees concerning the maintenance and development of the Licensed Trademark(s) and additional trademarks, logos, and designs, including, without limitation, market research expenses, inspiration expenses, consultant and/or agent fees, creative fees, and internal costs such as the cost of purchasing prints, designs, and any items associated with the Designs of the Licensed Products or Licensed Trademark(s) in connection with this Agreement.

Other License Commitments

Marketing Commitment: Licensee spend obligation - 1-4% of Gross/Net Sales or MGS

1-4% of Gross/Net Sales or MGS

Each year, Licensee shall spend on co-op advertising and promotion of Licensed Products/Services, the greater of at least ___ percent (_%) of either (i) the prior Year's actual Net Sales, or (ii) the current Year's MGS. This commitment is not to be deducted from any other payment obligations set forth herein.

Other License Commitments

Advertising Commitment: Licensee payment obligation - 1% to 4% for Licensor to spend itself

Licensee must pay to Licensor non-refundable contributions (each, a "Advertising Contribution") of ___ percent (_%) of either (i) the prior Year's actual Net Sales or (ii) the current Year's MGS, whichever is greater, payable to Licensor thirty (30) days prior to the start of each Year of the Term, for Licensor to advertise and promote the Licensed Trademark(s), with the exception of Year 1 of the Term which contribution shall be $_________, payable upon the execution of this Agreement by Licensee (the "Execution Date"). The Advertising Contributions are not to be deducted from any other payment obligations set forth herein.

Securing Payment

Upon execution or launch – advance payment required – credit toward royalty obligation

Upon termination mandate payment of remaining MGR

Securing Payment

Due Diligence

Letters of Credit

Liquidated Damages

Securing Payment: Manage Forecasts and Inventory

Mandate rolling, periodic sales forecasts

Mandate monthly/quarterly inventory reports

Wind Down provision

Retain right to purchase remaining inventory

Key Takeaways

1. Key financial terms in any brand license include Gross/Net Sales or Profit; Wholesale/Retail Prices; and Minimum Guarantees.

2. Royalty rate ranges depend on product and distribution channel, and are dictated by cost, availability and marketplace acceptance.

3. Be aware of anti-competitive laws and rules against price control restrictions over the Licensee. Some pricing constraints can be achieved with Resale Price Maintenance and Minimum Advertising Pricing Policies.

4. Other Licensee financial commitments include payments upon launch, for design contribution, as well as marketing and advertising contributions.

5. To secure Licensee's payment, Licensors can employ strict reporting/forecasting requirements, as well as other financial obligations, e.g., Letter of Credit or Liquidated Damages.

Brand License Resources

We have gathered a bibliography of suggested reading for those interested in exploring more about these topics.

Curriculum Development Team

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Copyright Language

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COURSE:

Tax, Financial Reporting

Chapter 8

International Trademark Association

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Session Overview

Topics Covered:

- Overview of Trademark Lifecycle
- Creation and Acquisition
  - Purchase price allocation
  - IP holding structures
- Exploitation and Licensing
  - Licensing and Principal model
- Transfer
  - What is transfer pricing?
  - Arms-length principle
  - Importance of tax

At the end of this , attendees should know…

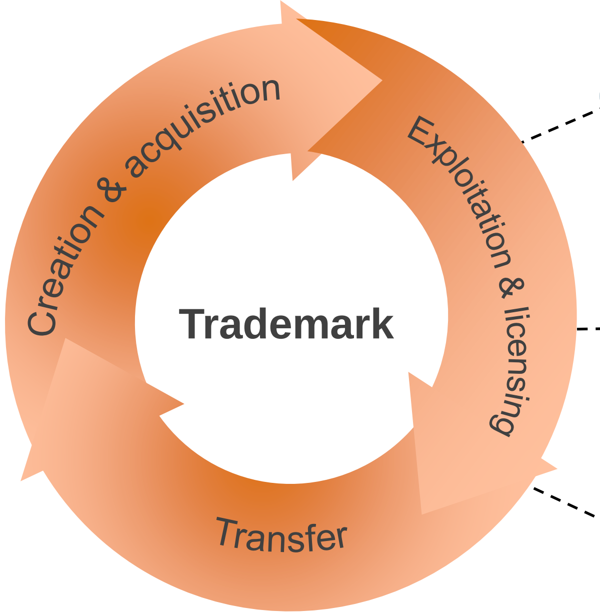
- ✓ The importance of tax for IP
- ✓ Allocation of trademark costs
- ✓ Business models and holding structures
- ✓ What is transfer pricing and how to comply with regulations?

Intro | Creation and Acquisition | Exploitation and Licensing | Transfer | Additional Resources

Two Things in Life Are Certain…Death and Taxes

This module provides an overview of various tax and financial reporting matters that are relevant for trademark and brand owners

The trademark lifecycle can be broken down into three main stages. Each stage further discusses key tax factors and implications for a company / trademark holder



1 **Creation and acquisition**

1. How do you allocate trademark development costs?
2. What is the most efficient organizational structure?
3. What should you consider when buying a trademark?

2 **Exploitation and licensing**

1. Who is using the trademark and where is it located?
2. What organizational business models should be considered?

3 **Transfer**

1. Have any thought been given to impacts on transfer pricing?
2. What steps are needed to comply with transfer pricing regulations?

Trademark Creation and Cost Allocation

The decision to create IP or acquire IP will likely be different, depending on tax situation. It is important to preemptively think through tax implications of creating or buying a trademark. A trademark is considered as an asset for tax purposes.

1 ***Trademark Creation*** — If creating a trademark, how does one allocate the cost of the creation?

OR

Trademark Acquisition — If acquiring a trademark, how does one allocate the value of the creation for tax purposes?

More Common

2 ***Expensing*** — The asset is not recognized on the balance sheet.

Less Common

Capitalization — The asset is recognized on the balance sheet at cost of development.

3 ***It is important to align business and tax needs when structuring the holding structure for a trademark. Misalignment can create significant tax and business burden.***

Trademark Acquisition

*If the trademark is acquired and not created, it must be recognized in the accounting and tax balance sheets of the acquirer with its acquisition cost (**the purchase price).***

Asset Deal: The acquisition of one or more individual trademarks

- Trademark-related assets (*e.g.*, domain names, trade secrets, customer lists)
- Entire business units (*i.e.*, trademarks, technical IP, and tangibles, such as machinery required for production)

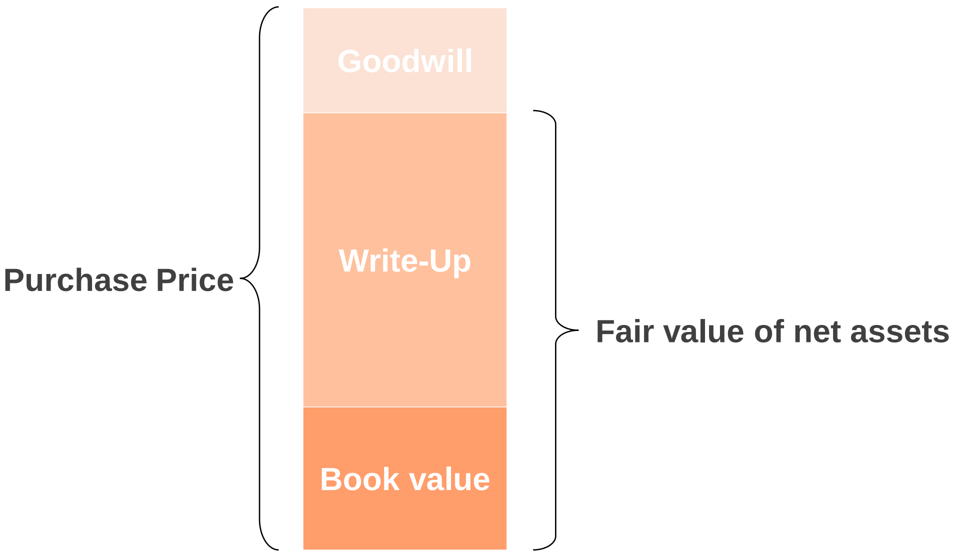
Balance Sheet

- A general rule for both accounting and tax purposes is that only an asset with a limited useful life can be amortized
  - The amortization period is typically based on its expected useful life
- Trademarks are usually deemed as having a limited useful life of 15 to 20 years

Reasons for limited life:

- Loss of value over time as the trademark is no longer utilized
- **Goodwill** – residual value of a business is usually considered as having a limited useful life – with the idea being to not overstate the value of the trademark on the balance sheet

Purchase Price Allocation



Goodwill = Purchase price – Sum of fair market value of net assets

Purchase price allocation: a practice under IFRS and US GAAP in which an acquirer allocates the purchase price into assets and liabilities of the target company

- Used for merger & acquisition accounting
- Can be recognized as Goodwill:
    - If the purchase price allocation leads to a result where the purchase price exceeds the sum of the fair market value (FMV) of net assets acquired
- Under PPA, goodwill (residual value) may account for a significant value of the intangible
    - Goodwill needs to be considered and included as part of any trademark sale/transfer
- For financial reporting, an intangible is treated as a stand-alone asset while that may not be the case for tax purposes

Example IP Holding Structures and Tax Considerations

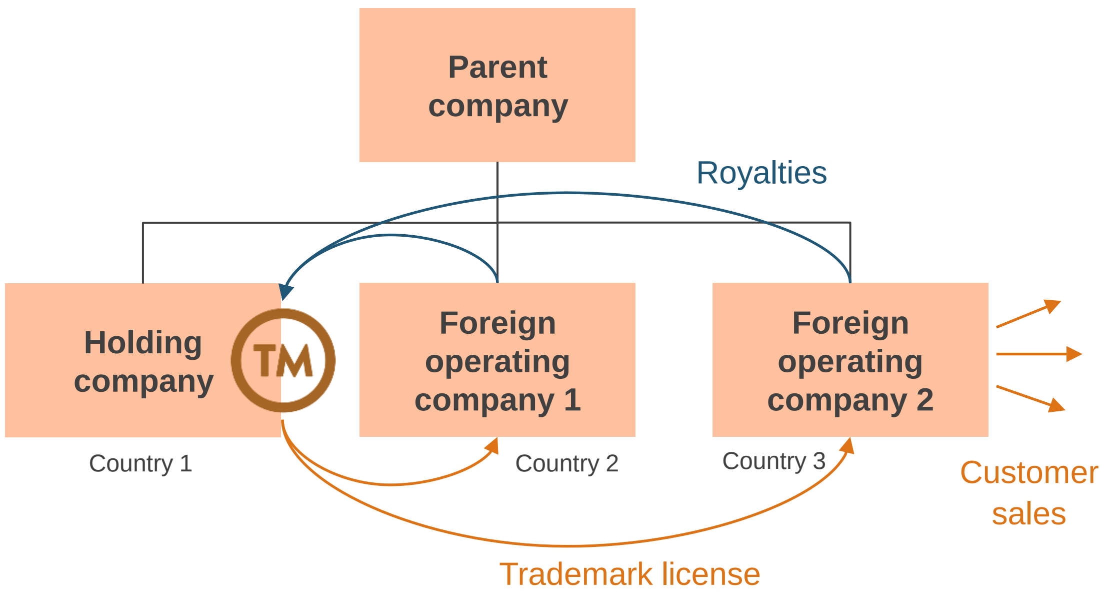
1 Central holding structure

Advantages

- Based on strategic factors, a trademark holding entity can be located within another jurisdiction potentially offering tax incentives/advantages, optimizing the after-tax return generated by trademarks -- through receiving royalties from operating companies
- The primary benefit for having a stand-alone holding company is that it can be transferred without needing to record ownership changes in trademark registers, negating potential time and monetary costs
- The holding entity also is responsible for activities such as maintenance (*e.g.*, trademark renewal requests)

Common issues

- What is the arm's length remuneration for the trademark?
- Value created by the trademark vs. other functions
- Are the parties behaving consistently with typical legal structure (*e.g.*, is the licensee bearing all the cost of maintaining the trademark)?



Example IP Holding Structures and Tax Considerations

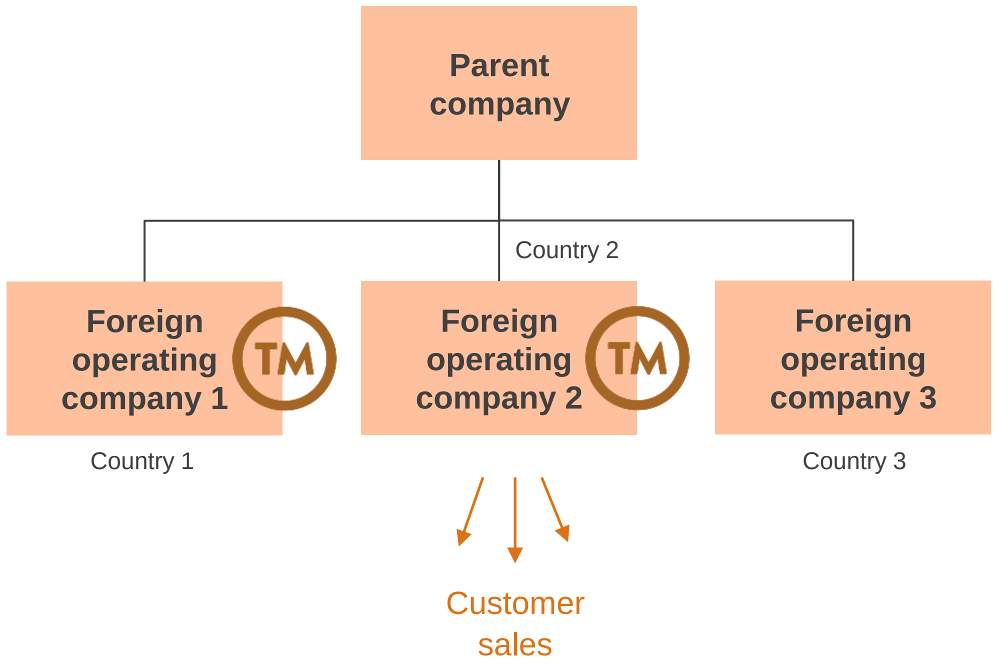
2 Distributed structure

Advantages

- Local ownership of individual trademarks
- Given that a trademark may only be used in one specific market/jurisdiction, there may be no reason to hold the trademark centrally
  - Especially if the company's policy dictates the trademark being managed locally
- Local trademark ownership provides a degree of independence for local brands

Common issues

- Legal form matching substance
- Transfer pricing



Key Learnings

It is important align business and tax needs when structuring the holding structure for a trademark

1. When developing a trademark, the development costs associated with creating the trademark will most likely be expensed as they are incurred, eliminating any trace of the trademark value from the balance sheet.

2. Significant capital gain taxes can occur upon disposition of an intangible asset. The tax authorities would look to calculate gains as the difference between the fair market value and a book value of $0 (if the intangible development cost was expensed).

3. Misalignment can create significant tax and business burden.

Who is Using the Trademark and Where is it Located?

Profit-driving operations and trademark-related tax effects	**Tax changes:** The associated effects occur through the trademark influencing an entity's profit, the basis for calculating the associated income tax • Rising sales (revenue increase) • Benefits from higher margins (via price increases) • Expenses borne for strategic marketing and advertising
Location considerations	**Location is dependent on the business' needs** • Tax aspects are usually of minor importance when choosing a jurisdiction • Respective tax rate • Special tax regimes • Anti-avoidance rules • Measures combatting aggressive tax planning • Exit strategy

There are no trademark-specific tax consequences associated with the proprietor's own use of its trademark

Intro | Creation and Acquisition | Exploitation and Licensing | Transfer | Additional Resources

Exploitation and Commercialization

Trademark Rights

The European Union Trademark Regulation (EUTMR) provides the legal owner of trademarks the rights to:

- Affix the sign to goods
- Offer the goods or distribute the trademarked goods within any market
- Utilize the trademark in advertising
- Grant rights or licenses in association with the trademark to others – such as any affiliated enterprises
- Prevent all third parties from using identical or similar marks for identical or similar goods or services without consent

Most common business models

- The proprietor's own use of the trademark
- The license model
- The principal model

Under the guidelines of Art. 9 of the EUTMR, the registration of an EU trademark provides the proprietor (the legal owner) the exclusive rights for any goods and services listed in the agreement.

Licensing

Licensing Model Process

Licensing model assumptions	• The legal owner grants a license for trademark, on an exclusive or non-exclusive basis • Must be registered with geographically local trademark office in some countries (China, Brazil, Russia) • The goal is to commercially exploit the asset • Most commonly, a license is provided in exchange for a royalty payment
Internal	• Licensing can be leveraged internally through an exploitation and trademark holding structure
External	• Licensing can also be a technique to exploit trademarks externally • It serves as the primary exploitation vehicle, as well as a secondary means of exploitation for non-core products • A process commonly used by well-known and well-regarded brands (*i.e.*, fashion and luxury brands)

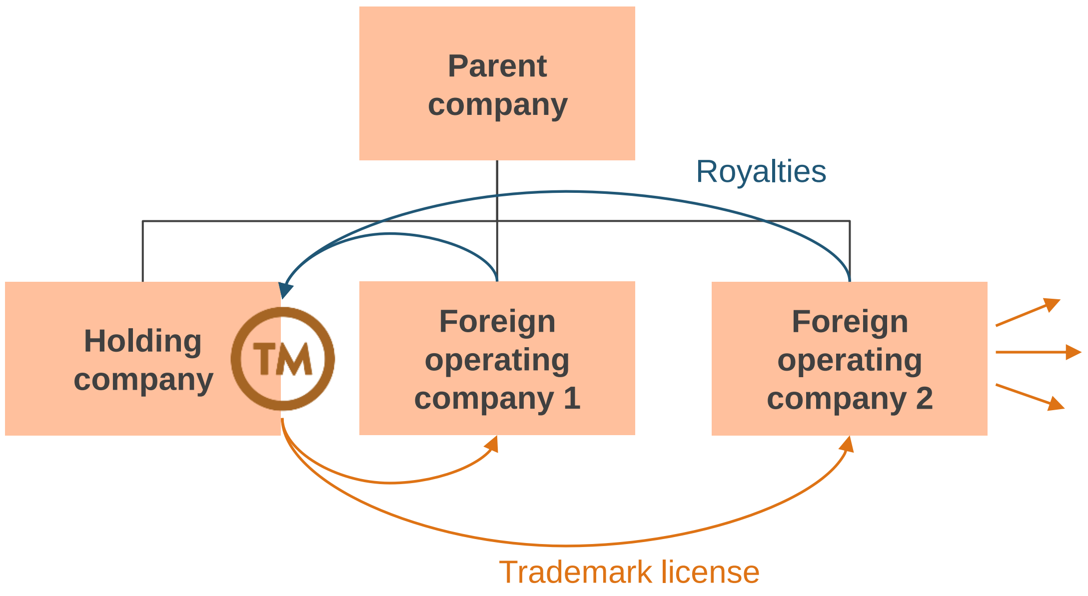
Licensing

Benefits of licensing

- Reduction in organizational and administrative maintenance (*e.g.*, staff, costs)
- Royalty income derived from licensing is usually subject to taxation
- The entity that pays for centralized, strategic marketing can be regarded as the beneficial owner of the trademark
- Local advertising carrying less risk
- A good alternative to sale/transfer of trademark

Tax implications of licensing

- Royalty income derived from licensing is typically subjected to taxation based on the holding company's geographic location
  - Must comply with the arm's length standard and relevant transfer pricing rules
- Based on Article 12 of the Organization of Economic Co-operation and Development (OECD) Model Convention, royalties can only be taxed in the state where the licensor is located
  - Withholding taxes are imposed in many countries to prevent abuse



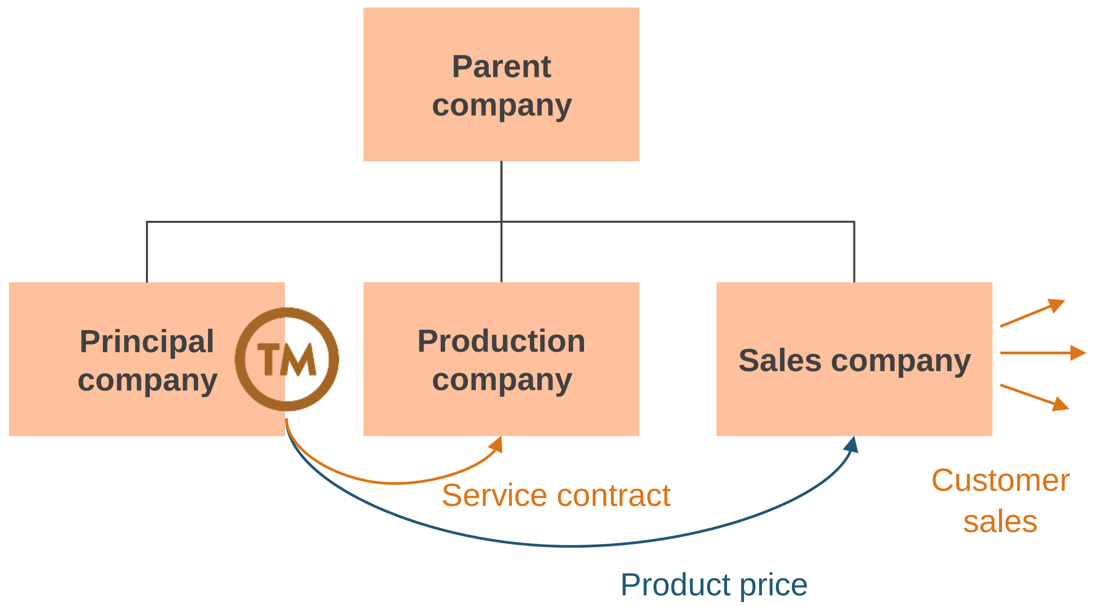
Principal Model

Benefits of the principal model

- The principal company performs the main functions (*i.e.*, operating and strategic management) within the group and enters into agreements with customers, bearing all related risk
- The principal company contracts functions out to other related companies to perform certain functions (*e.g.*, production, sales, *etc.*,)
- Income is derived from sales (*i.e.*, trademark utilization rather than licensing it out to other companies)
- The principal company receives the **residual profit** – the remainder of profits after all remuneration is paid out to related companies

Tax implications of the principal model

- No withholding taxes should apply
- Taxation and transfer pricing relating to the remuneration amount paid out to the related contracting companies
- Transfer pricing relating to the determination of the residual profit



Key Leanings

It is important to select an appropriate operational business model to maximize business and tax benefits

1. There are three main business models for exploiting a trademark (i) proprietors own use, (ii) license model, and (iii) principal model

2. Licensing is a good alternative to the sale or transfer of a trademark and provides for organizational and administrative savings

3. Under the principal model the principal company is entitled to a residual profit after remuneration is paid out to related companies

What is Transfer Pricing and Why Does it Matter?

Transfer pricing establishes the price of transactions between entities of the same company and is relevant to goods and services, tangible and intangibles assets, financial transactions, such as loans and guarantees, and etc.

Who	Transfer pricing generally applies to large firms with multiple subsidiaries/divisions that can transfer tangible and intangible assets internally	
Why	Transfer pricing allows companies to allocate earning between different subsidiaries and related legal jurisdictions, and subsequently allocate taxes	
Key terms	MNE/MNC	Multinational enterprise or corporation produces goods and delivers services in more than one country
	Legal entity	A legal entity is any company or organization that has legal rights and responsibilities, including tax filings.
	Controlled transactions	Transactions between 2 enterprises that are associated enterprises with respect to each other
	Uncontrolled transactions	Transactions between enterprises that are independent enterprises with respect to each other

Why Has Transfer Pricing Become So Prominent?

Multinational enterprise growth with increased world trade and technological progress	**Decision**	✓ *Self interest to maximize profitability and reduce effective tax rates (tax planning)*
Expanding list of goods and service offerings	**Strategy**	✓ *Geographic preferences* ✓ *Creation of profit centers* ✓ *Global vs. jurisdictional policies*
Inadvertent creation of international taxation issues	**Action**	✓ *Shift of profits from high tax jurisdictions to low tax jurisdiction (tax heavens)*
Increased global regulatory compliance requirements	**Reaction**	✓ *Aggressive penalties and scrutiny over transactions and intangible assets* ✓ *Greater push for transparency* ✓ *New reporting requirements*

The Arms Length Principle is the Foundation of TP

The Arm’s Length Principle

- The price agreed in a transaction between two related parties must be the same as the price agreed in a comparable transaction between two unrelated parties
- A standard that OECD member countries have agreed to use to determine transfer prices.

Criticisms of the arms length principle:

- Much room for interpretation: not every products is the same and not every brand has the same vale.
    - Are transactions ‘comparable’ enough?
- The arm’s length price can still facilitate tax avoidance by MNEs by shifting profits to low-tax jurisdictions

Impact of Taxes on Firms' Revenue and Profits

Cross-border pricing affects profits, and in which jurisdiction those profits land dictates just how much tax revenue those tax authorities can collect

Tax is a variable cost

- Different countries impose different tax rates.
  - For example, the US corporate tax rate is currently 21% as compared to that of Ireland which is currently 12.5%
- Tax controversy can be expensive and cause reputational damage
- Companies have to think about the efficient allocation of costs and revenues
- CFO surveys rank tax/TP as some of the highest impact issues they have to deal with
- To generate more profits, companies routinely restructure their operations, moving people and production capacities to take advantage of low tax rates

Applicable Methods and OECD BEPS Action 8

Transactional Methods	Resale Price Method	CUP (internal/external)
Profit Methods	Transactional Net Margin Method	Profit Split Method
Undefined Methods	Comparables Analysis	DCF

Base Erosion and Profit Shifting (BEPS) Action 8 – Application of the approach to Hard-to-Value Intangibles for which no reliable valuation exists

Aim

✓ *Prevent base erosion and profit shifting by moving intangibles among group members*

Reaction

✓ *Tax administrations can consider ex-post outcomes as presumptive evidence about the appropriateness of the ex-ante pricing arrangements*

What Are TP Regulations Looking For?

Key characteristics and comparability factors	
Contractual terms of the transaction Does a contract exist?	Formalized written contract outlining division of responsibilities, obligations and rights, assumption of identified risks and pricing arrangements[1]
Functional analysis How is value created? Who bears risk?	Functional analysis seeks to identify economically significant activities and responsibilities undertaken, assets used or contributed, and risks assumed by the parties to the transaction[2]
Characteristics of property What form or type does it have?	In the case of transfer of intangible property, the form of the transaction (*e.g.,* licensing or sale), the type of property (*e.g.,* patent, trademark or know-how), the duration and degree of protection and the anticipated benefits from the use of the property[3]
Economic circumstances Are markets similar?	Prices may vary across different markets even for transaction involving the same property; therefore, to achieve comparability requires that the markets in which independent and associated enterprises operate do not have differences[4]
Business strategies pursued Is there a business purpose?	Business strategies would take into account many aspects of an enterprise… [that have] bearing upon the daily conduct of business[5]

DEMPE Functions

Development	Everything that is associated with coming up with ideas for the brand and products, and putting plans and strategies in place for their creation
Enhancement	Continuing to work on aspects of intangibles to make sure they can perform well at all times and are constantly improving
Maintenance	Involves doing everything possible to ensure the intangibles can perform well and generate revenue at all times
Protection	Protection of intangible assets against any infringement
Exploitation	The terms of exploitation will differ according to the way in which intangible are used to generate profit

DEMPE functions focus on entities that may not be legal owners of the intangibles but have made significant contributions to the creation/development of the intangibles that do not receive their "fair share" of income

Functions

Assets

Risks

Legal owner of an intangible asset is only entitled to the economic return if they perform DEMPE activities

Key Learnings

It is important to consider transfer pricing implications during exploitation and transfer of a trademark

1. The arm's length standard states that the price agreed in a transaction between two related parties must be the same as the price agreed in a comparable transaction between two unrelated parties

2. Contractual terms of the transaction, economic circumstances and business strategies need to be aligned

3. The legal owner of an intangible asset is <u>only</u> entitled to the economic return <u>if they perform DEMPE activities</u>

Key Takeaways

1

1. It is important align **business and tax needs when structuring the holding structure for a trademark**. Misalignment can create significant tax and business burden.

2

2. It is important to **select an appropriate operational business model to maximize business and tax benefits**. There are three main business models for exploiting a trademark (i) proprietors own use, (ii) license model, and (iii) principal model.

3

3. It is important to **consider tax and transfer pricing implications during exploitation and transfer of a trademark**. Contractual terms of the transaction, economic circumstances and business strategies need to be aligned.

Additional Resources

- INTA. “*Taxation of Trademarks and Related Rights*”

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Copyright Language

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COURSE:

Trademark Damages

Chapter 9

INTA International Trademark Association

Our Instructor

Krista Holt

Managing Director at Econ One Research

Provides testimony on issues informing economic damages, valuation, marketing, licensing, lost profits, reasonable royalties, competition, discounting, most favored nation clauses, price fixing, domestic industry, bonding, industry trends, surveys for intellectual property, antitrust and competition, commercial damages and complex litigation, class action, and management practices

Session Overview

Topics Covered:

- Summary of Trademark Damages
- Lost Profits
- Disgorgement
- Reasonable Royalty
- Corrective Advertising
- Diminution
- Statutory Damages

At the end of the , attendees should know…

- ✓ Types of Trademark Damages
- ✓ How to calculate trademark damages in each of the approaches

Types of Trademark Damages

Agenda

1. Summary of Trademark Damages
2. **Lost Profits**
3. Disgorgement
4. Reasonable Royalty
5. Corrective Advertising
6. Diminution
7. Statutory Damages

Lost Profits

Actual sales lost to the defendant due to the infringement

Price erosion caused by defendant's infringement

Lost Profits for Trademarks

Loss of convoyed sales that the plaintiff normally sells along with the infringed product

Future lost sales if the future lost sales are such that the loss cannot be prevented by an injunction

Lost Profits

Lost Profits for Trademarks

- Involves an analysis of the marketplace
- Price elasticity may be a concern
    - Depending on the circumstances, higher prices may mean lower sales
- May subtract incremental costs to arrive at lost profit for the units the plaintiff could have sold but for the infringement
    - What is considered incremental may be conditional due to the circumstances of the case

Lost Profits

Case Study #1

From April 1993 Through April 2003, The Difference Between Custom Shirt's Actual And Projected Sales Totals Was $2,000,000. Lost Profits On These Sales Total $600,000. – P. 11

Key takeaway:

Factors that affect profitability other than the infringement are taken into consideration

Lost Profits

Case Study #2

[Our] Model Conservatively Assumes Custom Shirt's "But-for" Sales…would Maintain The Level Of Sales We Previously Projected For The March 2004-February 2005 Period And That Custom Shirt's Actual Future Sales Will Grow At A Rate Enabling It To Meet It's But-for Level By March 2010. This Calculation Results In Future Lost Sales Of $3,000,000 Resulting In Lost Profits Of **$1,400,000**. – P. 11-12

Agenda

1. Summary of Trademark Damages
2. Lost Profits
3. **Disgorgement**
4. Reasonable Royalty
5. Corrective Advertising
6. Diminution
7. Statutory Damages

Disgorgement of Defendant’s Profit

- Defendant’s profits due to their infringement may be recoverable
- Defendant’s profits may be available to the extent that the amount is not double counting

Disgorged profits must be properly apportioned

- **The plaintiff has to prove defendant’s revenues**
- **The defendant has to prove their expenses**
- **The apportionment of profits also must be proven by the defendant**

Disgorgement of Profits – Apportioning Profits

In a trademark case, the defendant can retain the portion of profit that resulted from "for example… the functional and aesthetic qualities of its product, the quality of its sales force, and pricing."

James Koulemay, "Monetary Relief in Trademark Infringement Cases."

Trademark Reporter, Vol. 85, p. 293

Apportionment of Defendant's Profit

- Plaintiff must prove revenues
  - Can estimate from 10-K or other third-party sources if the defendant does not produce its revenues

Defendant's Burden to Prove Expenses

- Direct Assistance Rule
  - "All expenses which directly assisted in the manufacture and sale of the product can be deducted, including some items of overhead."
- Fully Allocated Cost Rule
  - "All expenses properly allocable to the product under generally accepted accounting principles are allowed."
- Differential, Incremental or Marginal Cost Rule
  - "Deductions are allowed only for expenses that would not otherwise have been incurred 'but for' the manufacture and sale of the infringing product."
  - "This rule results in the largest recovery for the trademark owners, and is consistent with modern business school management theory, which holds that transactions are profitable if they yield a positive contribution to overhead."

James Koulemay, "Monetary Relief in Trademark Infringement Cases."

Trademark Reporter, Vol. 85, p. 288, 289

Apportionment of Defendant’s Profit

- Case Study:
  - *If RETAILER Is Found Guilty Of Infringement, Custom Shirt May Be Entitled To An Accounting Of Profits Unfairly Gained By RETAILER From Its Sale Of Counterfeit “Dolphin Animals” In RETAILER Stores. Financial Data Produced To Date By RETAILER Indicates Gross Profits On Infringing Sales Of $82,000.* – P. 12
  - *At This Time, We Can Only Observe That In Documents Filed With This Court, RETAILER Claims These Sales Total $157,000.* – P. 12
  - *RETAILER Claims That The Cost Of Goods Associated With The Sale Of The Infringing Products Totals $75,000.* – P. 13
  - *Based Upon These Representations By RETAILER, Its Gross Profits From Infringing Sales Total $82,000.* – P. 13.
  - Based upon the circuit, the appropriate operating expenses would be deducted.
  - Finally, you would apportion the Profits remaining, depending on the portion of profits allocable to the alleged trademark infringement.

Agenda

1. Summary of Trademark Damages
2. Lost Profits
3. Disgorgement
4. **Reasonable Royalty**
5. Corrective Advertising
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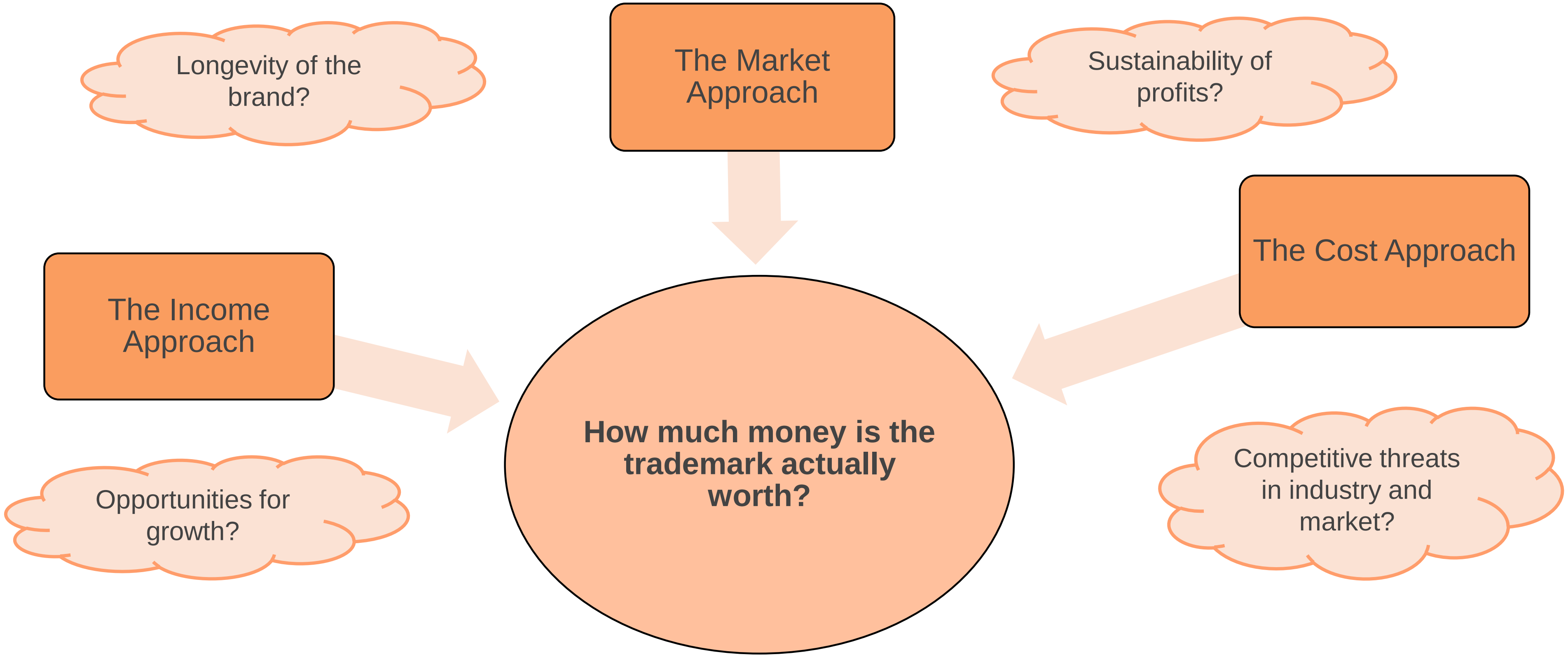
7. Statutory Damages

Reasonable Royalty

- The Measure Of A Reasonable Royalty Has Been Traditionally Used In Damages Estimates For Patent Infringement But Certain Jurisdictions Allow its Use For Trademarks
- There are a number of approaches to value a trademark based on:
  - The Market Approach
  - The Cost Approach
  - The Income Approach

Putting a Value on the Trademark



Reasonable Royalty

Reasonable Royalty

- May Be A Running Royalty Or A Lump Sum Amount.
  - Risk
  - Monitoring Costs
  - Financial Condition

- In Determining An Appropriate Royalty Rate, Experts Often Use The *Georgia-Pacific* Factors, Named For The Case In Which They Were Established (*Georgia-Pacific Corp. V. United States Plywood Corp., 318 F. Supp.1116 (S.D.N.Y. 1970), Modified And Affirmed, 446 F.2d 295 (2d Cir. 1971))*

Georgia-Pacific Factors

1. Established Royalty Rates For The Trademark At Issue
2. Royalty Rates Licensee Paid For Comparable Trademarks
3. Exclusivity
4. Plaintiff's Licensing Policies
5. Business Relationship Of The Plaintiff And Defendant
6. Whether There Are Convoyed Sales
7. The Likely Term Of The License
8. Commercial Success And Profitability Of The Trademark At Issue
9. Advantages Of The Trademark Over Any That Had Previously Been Used
10. Trademark's Character As Produced By The Plaintiff And Its Benefits To Those Who Use It
11. Extent To Which Licensee Used The Trademark
12. Other Comparable Licenses In The Market
13. Portion Of Profits Attributable To The Trademark
14. Testimony Of Qualified Experts
15. What A Reasonable Licensor And A Reasonable Licensee Would Have Agreed Upon

Agenda

1. Summary of Trademark Damages
2. Lost Profits
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4. Reasonable Royalty
5. **Corrective Advertising**
6. Diminution
7. Statutory Damages

Corrective Advertising

Corrective Advertising

- “The Owner’s Actual Or Projected Future Cost To Restore The Value Of Its Trademark Or Correct The Misimpression Created By False Advertising.”

Agenda

1. Summary of Trademark Damages
2. Lost Profits
3. Disgorgement
4. Reasonable Royalty
5. Corrective Advertising
6. **Diminution**
7. Statutory Damages

Diminution

<u>Diminution</u>

- Plaintiffs May Claim Damages Resulting From Their Brand's Reputation Diminishing In Value As A Result Of Infringement
- Considerations Include:
  - The Value Before And After The Infringement
  - Value Of The Harm To The Brand

Agenda

1. Summary of Trademark Damages
2. Lost Profits
3. Disgorgement
4. Reasonable Royalty
5. Corrective Advertising
6. Diminution
7. **Statutory Damages**

Statutory Damages

- Statutory damages may be available according to each country's trademark laws, the domestic laws, rules and regulations.
- Statutory damages are awarded for infringement in a dollar amount per trademark per product type
  - For example, in the US, statutory damages are available for:
    - Bad Faith Registration of Domain Names
    - Counterfeiting and Willful Infringement
    - (See Appendix A)

Trademark Damages Across the World

- This presentation outlines the basic approaches for valuing trademark damages.
- However, different countries across the world allow for different approaches when valuing trademark damages.

Key Takeaways

- The types of trademark damages that are available
- The basics of the most common approaches to trademark damages

Appendix A: United States – Requirements for Lanham Act Damages

15 USC §1125:

- "[T]he owner of the famous mark shall be entitled only to injunctive relief …unless the person against whom the injunction is sought willfully intended to trade on the owner's reputation or to cause dilution of the famous mark. If such willful intent is proven, the owner of the famous mark shall also be entitled to … remedies set forth in sections 35(a) and 36 [15 USC § §1117(a), 1118], subject to the discretion of the court and the principles of equity."
- 15 USC §1117: "[T]he plaintiff shall be entitled … subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action."

Appendix A: United States – Types of Lanham Act Damages

- Several Types Of Damages Are Recoverable Under This Statute
  - Lost Profits
  - Disgorgement
  - Reasonable Royalty – Not Statutory But Upheld By Various Case Law (More Strongly In Some Districts Than Others)
  - Corrective Advertising
  - Diminution Of The Mark
  - Statutory Damages (Only In Cases Regarding Counterfeit Marks And Bad Faith Registration)
  - In "Exceptional Cases": Costs, Attorney's Fees, Prejudgment Interest, And up to a Tripling Of Damages As A Punitive Measure

Appendix A: United States – Types of Lanham Act Damages

Corrective Advertising:

- "Although obtaining an award for injury to good will is difficult, some courts have allowed recovery for future corrective or restorative advertising designed to remedy damaged good will, as discussed below, and courts have discretion to increase the award of proven damages and profits to compensate for unproven injury to good will."

  – James Koelemay, "Monetary Relief in Trademark Infringement Cases." *Trademark Reporter*, Vol. 85, p. 282.

- Not all but some courts have used anywhere from 25% to 100% of these advertising costs could be assigned as damages

Appendix A: United States – Types of Lanham Act Damages

Statutory Damages For Trademark:

- Statutory Damages For Counterfeiting Range From **$1,000 To $200,000 Per Mark** Per Type Of Product Or Up To **$2 Million** For Willful Infringement
- Statutory Damages For Bad Faith Registration Of Domain Names Is Not Less Than **$1,000 Nor More Than $100,000** Per Domain Name In Lieu Of Actual Damages And Profits

Appendix A: United States – Relevant Case Law

- In Big O Tire Dealers, Inc. V. The Goodyear Tire & Rubber Co., (561 F.2d 1365, 1369 (10th Cir. 1977)), The Court Applied 25% To Defendant's Advertising Expenditures In Arriving At Damages For Corrective Advertising.
- In U-Haul Intern., Inc. V. Jartran, Inc., (793 F.2d 1034 (9th Cir. 1986)), The Court Awarded A Full Accounting Of Defendant's Advertising Expenditures.

Appendix B: Other Country Specific Trademark Damages

United Kingdom

Successful claimant has to choose between:

- Damages – compensation for loss suffered due to the infringement/passing off (applicable from the date of filing of the trademark application for registered trademarks); **OR**
- Account of profits – the profits wrongfully made by the infringer (at the court's discretion).

Canada

- Purely compensatory – must represent actual loss suffered as a direct result of unlawful acts by defendant
- Plaintiff must show causal link between loss and infringement
- Court may award injunction, damages or profits (plaintiff must elect), punitive damages, or destruction or other disposition of offending materials

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COURSE:

Leading with Cents: Budgeting for Law Departments and Law Firms

Chapter 10

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Session Overview

Topics Covered:

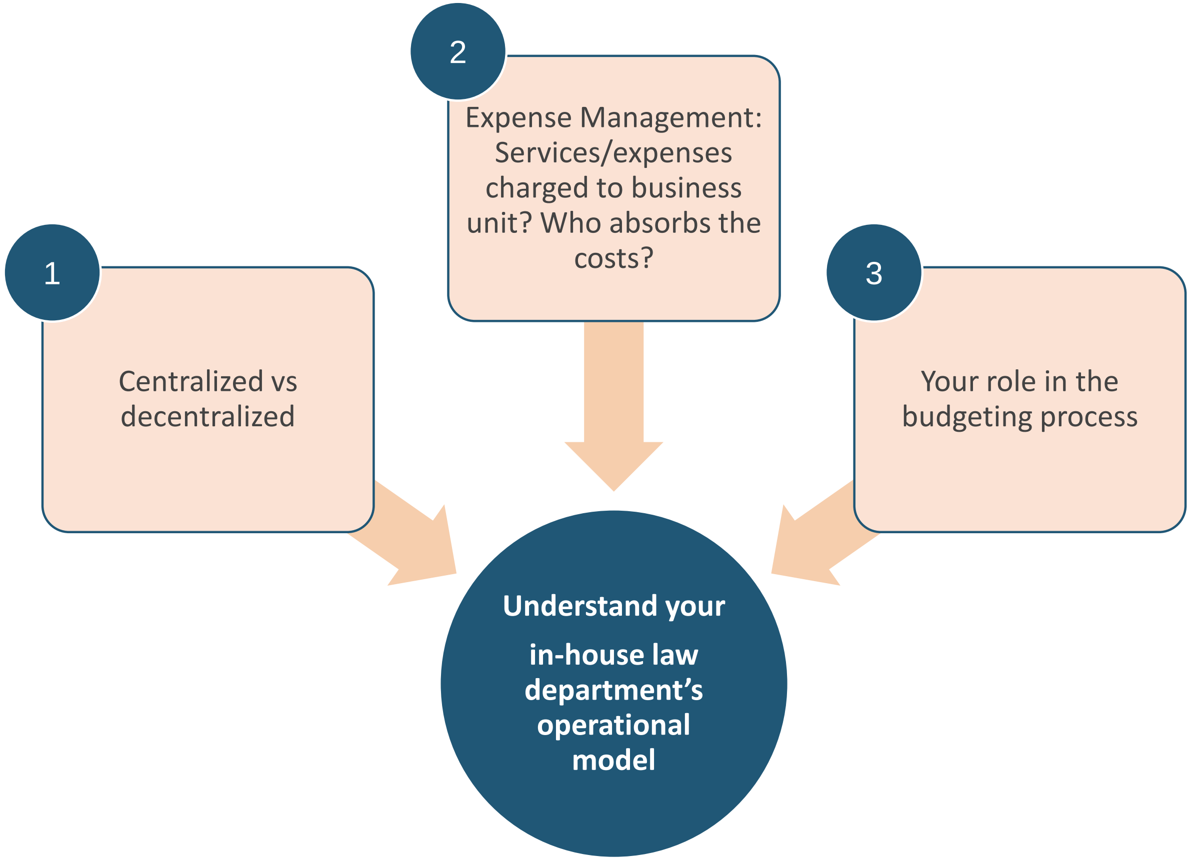
- Law Department Budgeting Process
- Development, Execution and Adjustments
  - Common budget categories
  - Important caveats
  - Develop your budget and review with key team members/stakeholders
  - When is it time to revisit or adjust your budget?
  - Dealing with unbudgeted expenses
  - Forecasting
  - Best practices
- Unique Considerations for Law Firms
  - Other operational costs
  - Practice level budgets are like law department budgets
  - Revenue
  - Procurement for legal budgets/RFPs
  - Alternative fee arrangements
  - Watch outs

At the end of this session, attendees should know…

- ✓ Law Department Budgeting Process
- ✓ How to Development, Execute and Adjust a Budget
- ✓ Common Budget Categories
- ✓ Forecasting
- ✓ Budgeting Best Practices
- ✓ Unique considerations for law firms

Intro | Law Dept. Budget | DE&A | Considerations | Additional Resources

Law Department Budgeting Process



Budgeting Resources

Resource	Information to Gather
Management Meetings	Understand business priorities, upcoming projects
Internal Stakeholders	Perspectives from internal business teams, Finance, HR, legal colleagues
External Stakeholders	Perspectives from outside counsel, vendors, contractors
Gathering/Updating Metrics	Consider headcount and previous spend
Audit of current practices/predictive modeling	Review current or similar budgets, compare actuals with current business practice
Licensing, Royalties, & other Revenue Models	Reconciliation with legal budget/expense/recognition of a value of IP law department Treatment of IP as an asset managed separately Amortized and Non-Amortized budgets

Budget Development, Execution and Adjustments

1. Common Budget Categories
2. Important caveats
3. Develop your budget and review with key team members/stakeholders
4. When is it time to revisit or adjust your budget?
5. Dealing with unbudgeted expenses
6. Forecasting
7. Best Practices

Common Budget Categories

Source: https://www.getleeway.com/blog/preparing-your-legal-department-budget

#	Category	Description
1	**Salaries and benefits**	The full-package cost of each employee (you'll need to coordinate with HR on this)
2	**Training**	The cost of professional development activity such as courses and conferences
3	**Professional memberships**	The fees incurred from membership organizations or certification bodies
4	**Subscriptions**	The cost of regular publications or services such as legal media
5	**Social fund**	The cost of team building, celebratory occasions and off-site events
6	**Operational allocations**	The legal department's share of wider business overheads such as rent and utilities (coordinate with Finance for this)
7	**Office supplies**	The cost of any stationery or postage required
8	**Travel-related expenses**	The all-encompassing cost of any work-related travel such as to and from off-site meetings or training events
9	**External legal support**	The cost of outside counsel and contractors (likely one of your biggest line items)
10	**Legal tech**	The cost of tech owned by the legal department such as your contract management platform or e-billing system
11	**Project based costs**	The cost resulting from the work of the legal function, such as translations or filing for a trademark, IP, litigation, etc. (be cautious though - this doesn't necessarily always have to come from the legal department's budget)
12	**Miscellaneous**	Anything else

Other Budget Considerations

Include important caveats (what is not included)

Develop your budget and review with key team members/stakeholders

When is it time to revisit or adjust your budget?

Dealing with unbudgeted expenses

Forecasting

Forecasting
- How is forecasting different from budgeting?

What type of forecast?
- YTD
- Budget
- Actual
- Forecast
- Variance

Other Considerations
- Rolling or quarterly?
- Understanding how corporate finance team works, then determines how the law department projects the budget

Building Budgets & Forecasts

Assumptions & Past Results → Forecast → Calculations → Results & Analysis

Budget & Forecasting Tools

- Outline before you start
- Open Excel
- Apply the Excel Tips: no numbers in formulas, color-code the inputs, etc.
- Consult with your Finance department regarding a preferred company template

Income (Funds In)

- *Forecast Approach: Top-down, Bottom-up, benchmarked*

Expenses (Funds Out)

- *Activity specific*
- *Assistance/Discretionary*
- *Fixed/Allocated*

Forecasting – Revenue & Funds In

Bottom Up	Top Down	Peer Based
Start with Offering-level economics: • How many units will be sold at what price? • Cost to procure, produce & sell each unit • Marketing and Overhead costs **Consider:** • Who is the customer? Why will they buy? • Who are suppliers – any constraints on production?	**Share of Market** • How big is the target market • What is a reasonable market share **Consider:** • Who are competitors? • Is the Offering disruptive? • Can the company produce enough to reach target market share?	**Match Guideline Company Performance** • Use market metrics to forecast growth and profits **Consider:** • Why are the selected peers the best benchmarks? What makes each non-comparable? • Does the company have sufficient resources to match Peer Group?

Forecasting – Expenses

Activity Specific

Costs and expenses incurred in the production, procurement, and delivery of products or services. These costs are incurred when products & services are delivered.

These expenses are tracked at the produce or service level and typically only incurred when products or services are offered.

Typically, these costs include activities such as cost of goods sold, commissions or referrals, travel, project research, printing, and shipping costs *(and cost to hire experts).*

Assistance / Discretionary

Amounts spent to assist in development and production of products or services.

These costs are typically accounted for at the operating unit, division, or business unit level rather than tracked and managed at the project, product or service unit; but the activities are related to sale of the Offering.

Typically include marketing, quality control, support, and expenses allocated to the business unit based on the level of activity at the business unit.

Fixed / Allocated

Expenses incurred by the organization that are allocated to the business unit, and costs that do not vary in the short term.

These costs are typically tracked and managed at the corporate level and allocated to business units. These costs enable or support sale of the product or service as well as the organization's other revenue-generating activities.

Typically, include branding, payroll, administration, corporate overheads, and rent and facilities charges.

Sample Budget

Performance Analysis	Last Year	Budget	Variance
As of 01Nov21			
$US	*Last Year*	*Budget*	*Variance*
Funds In			
Projects	12	15	*3*
Fee / Project	98,000	107,800	*9,800*
Revenue	**1,176,000**	**1,617,000**	***441,000***
Bad Debts / Discounts	15,000	40,425	*25,425*
Net Revenue	**1,191,000**	**1,657,425**	***466,425***
Annual Change			
Funds Out - Activity Specific			
Consultants	20,000	21,000	*1,000*
Royalty	28,800	48,510	*19,710*
Travel	20,000	15,000	*(5,000)*
Activity Specific Costs	68,800	84,510	*15,710*
Profit After Activity Specific Costs	**1,122,200**	**1,572,915**	***450,715***
% of Net Revenue			
Funds Out - Assistance			
Team Salaries	455,000	603,750	*148,750*
Tax & Benefits	92,000	117,075	*25,075*
Bonuses	90,000	79,000	*(11,000)*
Advertising & Marketing	100,000	323,400	*223,400*
Total Assistance Costs	737,000	1,123,225	*386,225*
	-	-	-
Profit After Assistance Costs	**385,200**	**449,690**	***64,490***

See file: INTA Excel Exercise Session 10.xls

Comments

- Inputs & assumptions outside the presented Results Range
- Supporting calculations outside the Results Range

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Sample Forecast

Sample Budget & Project Performance Forecast							
Performance							
	Past Results		*Forecast Period*				
As of 01Nov21	*Prior Year*	*Last Year*	*Budget (FY+1)*	*Estimate (FY+2)*	*Budget (FY+1)*	*Estimate (FY+2)*	*Budget (FY+1)*
$US	*2020*	*2021*	*2022*	*2023*	*2024*	*2025*	*2026*
Funds In							
Projects	10	12	15	17	19	21	23
Fee / Project	110,000	98,000	107,800	118,580	130,438	143,482	157,830
Revenue	**1,100,000**	**1,176,000**	**1,617,000**	**2,015,860**	**2,478,322**	**3,013,122**	**3,630,090**
Bad Debts / Discounts	25,000	15,000	40,425	20,159	24,783	30,131	36,301
Net Revenue	**1,125,000**	**1,191,000**	**1,657,425**	**2,036,019**	**2,503,105**	**3,043,253**	**3,666,391**
Annual Change		*6%*	*39%*	*23%*	*23%*	*22%*	*20%*
Funds Out - Activity Specific							
Consultants	14,000	20,000	21,000	22,050	22,050	22,050	22,050
Royalty	25,000	28,800	48,510	60,476	74,350	90,394	108,903
Travel	2,500	20,000	15,000	15,000	15,000	15,000	15,000
Activity Specific Costs	41,500	68,800	84,510	97,526	111,400	127,444	145,953
Profit After Activity Specific Costs	**1,083,500**	**1,122,200**	**1,572,915**	**1,938,493**	**2,391,706**	**2,915,810**	**3,520,438**
% of Net Revenue	*96%*	*94%*	*95%*	*95%*	*96%*	*96%*	*96%*
Funds Out - Assistance							
Team Salaries	425,000	455,000	603,750	798,000	845,250	892,500	1,002,750
Tax & Benefits	81,500	92,000	117,075	161,700	166,425	171,150	197,925
Bonuses	25,000	90,000	79,000	97,000	120,000	146,000	176,000
Advertising & Marketing	75,000	100,000	323,400	403,172	495,664	602,624	726,018
Total Assistance Costs	606,500	737,000	1,123,225	1,459,872	1,627,339	1,812,274	2,102,693
Profit After Assistance Costs	**477,000**	**385,200**	**449,690**	**478,621**	**764,366**	**1,103,535**	**1,417,745**
% of Net Revenue	*42%*	*32%*	*27%*	*24%*	*31%*	*36%*	*39%*
Total Compensation / Net Rev.	*47%*						
Funds Out - Allocations							
Rent & Facilities	75,000	85,000	87,125	91,481	91,481	91,481	91,481
Corporate Overhead	56,250	59,550	80,850	100,793	123,916	150,656	181,505
Total Allocated Expenses	131,250	144,550	167,975	192,274	215,397	242,137	272,986
Activity Profit	**345,750**	**240,650**	**281,715**	**286,347**	**548,969**	**861,398**	**1,144,759**
% of Net Revenue	*31%*	*20%*	*17%*	*14%*	*22%*	*28%*	*31%*

See file: INTA Excel Exercise Session 10.xls

Comments

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- Supporting calculations outside the Results Range

Intro | Law Dept. Budget | DE&A | Considerations | Additional Resources

Budgeting Best Practices

1. Know your budget
2. Know what is going on at any given time
3. Know how your information is stored
4. What are the trends?
5. Educate internal components
6. Have a plan for budgeting surprises
7. Length of time that trademark related matters will vary according to jurisdictions
8. When payment is made and when payment is recognized
    a. (cash v accrual)
    b. Different countries, different currencies (US v Euro)
    c. Payment of invoices and different financial years

Unique Considerations for Law Firms

Key Differences	Considerations
Other operational costs	Rental, IT, marketing, and business development budgets, etc.
Approach to law firm budgeting can be similar to law department budgets	Consider your firm's approach to budgeting (by department, by practice area, etc.) Practice level budgets could be treated like law department budgets
Revenue	Billing rate & Margins
Procurement for Legal Budgets/RFPs	Interaction with procurement representative Understand their role/perspective and how to engage
Alternative Fee Arrangements	Flat Fee Subscriptions Contingency
Watch outs/Caution	Law firms as the "banker" due to the lag time in payment by the end client Practices with referral network is based on trust, establishing payment terms (important to educate) Billing Guidelines and Expectations • Cultural Differences: US v EU • US bill hourly/Others bill on completion

Additional Resources

We have gathered a bibliography of suggested reading for those interested in exploring more about these topics.

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     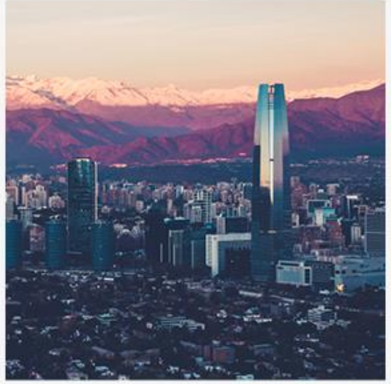

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