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# Client Briefing

NOVEMBER 2011

Independent Investment Banking for Media, Information, Marketing Services & Technology

## IN THIS ISSUE...

- 2011 Outsell Signature Event .....1
- Marketing Services .....1
- JEGI Private Equity Forum .....3
- The Economic Outlook .....4
- M&A Conversation .....6
- An Intellectual Property "Check Up" ..7
- JEGI Continues to Lead the Market ...8



JEGI hosted its annual Private Equity Forum on September 22 at the Four Seasons Restaurant in New York City. *(Top from left)* Jeffrey Dachis, Founder & CEO, Dachis Group; Wilma Jordan, CEO, JEGI; and Charlie Engros, Managing Partner, Morgan Lewis (sponsor). *(Bottom from left)* Steve Brotman, Managing Director, GSA Ventures; and Scott Peters, Co-President, JEGI.



The fifth annual Outsell Signature Event took place at the Arizona Biltmore in Phoenix, AZ from October 19-21. *(Top from left)* Matthew Bowman, Principal, Austin Ventures; Adam Gross, CMO, JEGI (co-producer); and Chris Caren, CEO, iParadigms. *(Bottom from left)* David "Skip" Prichard, CEO, Ingram Content Group; and Anthea Stratigos, CEO, Outsell.

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## Outsell's Signature Event: Finding Revenue in All the Right Places

Outsell, the leading provider of market research and intelligence for the information industry, and The Jordan, Edmiston Group, Inc. (JEGI) collaborated on the fifth annual Outsell Signature Event titled "Finding Revenue in All the Right Places", held October 19-21 at the Arizona Biltmore in Phoenix, AZ. Industry experts and thought leaders shared perspectives and case studies about driving revenue and maintaining a cutting edge in this ever-evolving marketplace.

The Outsell event is the only global conference convening CEOs, COOs, Presidents, and Managing Directors from both strategic companies and private equity firms across the information industry. The event provided an overview on how the industry is successfully executing on business models, strategies, and growth, while providing time to connect with peers and reflect on innovative ideas.

Speakers addressed a number of key topics related to surviving and thriving in this transformational environment. Excerpts from "on-the-record" presentations follow:

### 2012 INFORMATION INDUSTRY OUTLOOK Anthea Stratigos, Co-Founder & CEO, Outsell

The information industry is a \$462 billion market comprising 14 segments. The largest, News Providers & Publishers, accounts for approximately 19% of industry revenue. Search Syndication & Aggregation (13.7%) and Education & Training (11.1%) are the next largest segments of the market.

As shown in the accompanying chart, the information industry is expected to grow approximately 3% in 2011, and then at 3% to 4% through 2014. Through 2014, Search Syndication & Aggregation is expected to outpace all other sectors by growing at a CAGR of 15%, and it will likely surpass the news segment as the largest information industry sector. Market Research and Scientific, Technical & Medical sectors are forecast to be the next fastest growing segments, increasing at CAGRs of 5% and 4.4%, respectively, through 2014.

The rest of the information industry segments are forecast to grow at CAGRs of between 2% and 4% from 2011 to 2014, except for the Yellow Pages & Directories and News Providers & Publishers sectors, which are projected to decline at CAGRs of 3.3% and 4.6%, respectively, over the period. The News industry has been in structural decline over the past few years, due to the rise of digital platforms and alternative news sources.

**Global Expansion** From a global perspective, the information industry is increasingly being driven by the growth of revenue in emerging countries, such as China and India. Since 2006, information industry revenue has grown at CAGRs of 7.2% and 4.8% in the Asia Pacific and South America regions, respectively. This compares to a 1.2% CAGR decline and a 1.1% CAGR increase in information industry revenue in the US and the

*(continued on page 4)*

## Marketing Services: Driving Growth via Capabilities Leadership

By Matthew Egol, Partner and Namit Kapoor, Principal, Booz & Company

As executives across the media and marketing ecosystem look to renew growth coming out of the Great Recession, digital marketing services has emerged as a primary area of focus. Spending on marketing services – the "picks and shovels" with which to build out new digital capabilities – now exceeds spending on advertising, having grown faster than paid media since well before the downturn. Indeed, marketers have recently accelerated shifts in spending away from advertising to other priorities, such as their own websites, social media, mobile, shopper marketing, and loyalty programs. In our view, they aren't likely to switch back.

*(continued on page 2)*

The digital marketing services sector is growing rapidly, as marketers focus on building direct relationships with consumers, deepening engagement along their path to purchase, and driving accountability for ROI. Marketers are expanding their roster of service providers and redefining their relationships with media companies, giving rise to profound implications for the sell-side of the ecosystem. Media companies must deliver new sources of value, trading on their unique strengths in audience relationships, insights, and content creation. For full report titled “Reinventing Print Media”, visit [www.jegi.com/resource-center/industry-reports](http://www.jegi.com/resource-center/industry-reports).

Agency services companies also have a growing need to innovate, especially as the advertising and promotions mix shifts towards more owned and earned media, as clients invest in data and technology-enabled programs, and as marketers pursue new opportunities to collaborate with retailers to engage shoppers. For full report titled “The Promise of Private Label Media”, visit [www.jegi.com/resource-center/industry-reports](http://www.jegi.com/resource-center/industry-reports).

Booz & Company’s Consumer, Media & Digital team has worked with leading companies across the marketing and media ecosystem on these opportunities, and has noted that a few critical requirements are driving growth in marketing services.

One key to success is capabilities leadership. The most valuable capabilities are distinctive and continually improving, so that others can’t easily

match them; they work as a system, reinforcing each other’s impact, and thus maximizing opportunities. Applying a capabilities lens helps avoid blind spots that result when a company focuses solely on technology or changes to the organizational structure, and enables service providers to achieve greater coherence in their businesses. For full report titled “The Coherence Premium,” visit [www.jegi.com/resource-center/industry-reports](http://www.jegi.com/resource-center/industry-reports).

There is no single recipe for success, but one common group of capabilities will likely play a major role in building a customized system that can give any marketing services provider an edge (as shown in Exhibit 1).

### 1. Insights and Analytics

Insights about end consumers are vital to effective integrated marketing programs and for shopper marketing collaboration between national brands and retailers. Best-in-class insight programs identify key drivers of motivation, as well as the barriers that separate motivation and purchase. To help marketers size the “headroom” for growth, and to make the right investments along the path to purchase, the research toolkit must be focused on turning insights into action. Delivering analytics that help marketers prioritize segments as well as ways to engage them, and measuring the results of programs consistently, are key to becoming a leader in digital marketing services.

### 2. Relationship Marketing

Digital changes the game of engaging consumers around their interest areas. It enables marketers to build branded experiences at home, on the go, and in the store. It enables a more holistic view across all touch points, creating a valuable profile of consumers’ interests and behaviors beyond demographics and household level data. Marketers can use this database to optimize the targeting of content and offers, and to integrate communication across web sites, mobile and social media.

### 3. E-Commerce

Global e-commerce sales continue to grow at double digit rates and are on track to reach \$1 trillion annually. As e-commerce occurs more frequently via mobile devices and social media, growth will accelerate. Penetration varies considerably across product categories — but the trajectory is clear. Retailers want to reach consumers before they enter the store and sustain their “share of wallet”. National brands are pursuing opportunities to collaborate with retailers in delivering shopper solutions. The leading providers of digital marketing services are building the capa-

bility to integrate e-commerce to better engage shoppers along their path to purchase. For example, they are using targeted deals platforms, location-based services, and social shopping applications. For full report titled “The Rise of Social Apponomics”, visit [www.jegi.com/resource-center/industry-reports](http://www.jegi.com/resource-center/industry-reports).

### 4. Multi-Channel Campaigns

While email is still an effective vehicle for engaging shoppers, social media and mobile are emerging as critical complements and preferred communication channels for many consumers. A key strategic question for marketing services providers is where to focus: the primary areas where they will deliver value, vs. where they will plug into others’ technology platforms or services offerings. Building a world class multi-channel campaign management capability requires access to quality data and analytics to help prioritize the media segments in which to invest and to boost ROI. Leading marketers are also integrating the new digital platforms with more traditional approaches, such as direct mail, newspaper inserts, and sampling events.

### 5. Real Time & Behavioral Targeting

Digital advertising campaigns deliver more relevant, more targeted advertising than their offline counterparts by leveraging data and providing the ability to follow consumers along their path to purchase. Advertising dollars are shifting from targeting based on demographics or

context, to targeting focused on consumer behavior in the market. To date, a lot of the innovation has focused on the dynamic insertion of ads, while providing for more rigorous modeling of the ROI for paid media. Looking forward, there is significant opportunity to improve the targeting of content and offers along the path to purchase.

### 6. Solutions Marketing

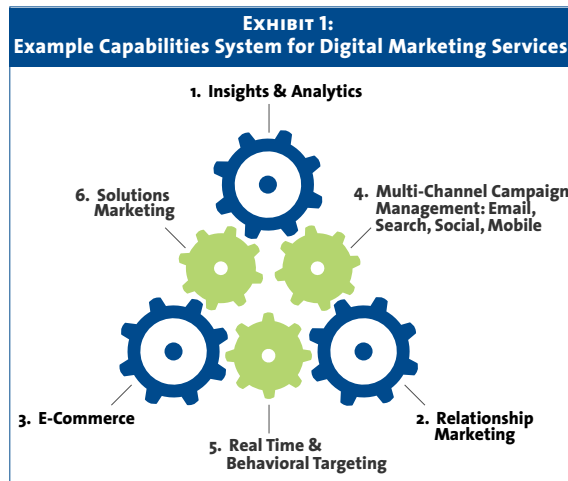
As marketers shift spending from paid to owned and earned media, a primary objective is to build branded experiences that better engage shoppers and move them from awareness to purchase to loyalty. Solutions marketing is emerging as a key focal point for leaders in shopper marketing, providing a bridge between promotions and brand marketing. Shopper solutions enable greater focus on fewer, bigger and better programs

and earlier upstream planning. They also facilitate more effective collaboration among manufacturers of complementary products, as well as between manufacturers and retailers. (For example, a maker of charcoal briquettes, a national beer brand, and a grocery chain could develop a single solutions marketing campaign together.) Solutions marketing also provides a natural way to extend investments in insights and analytics capabilities to e-commerce. For full report titled “Shopper Marketing 5.0,” visit [www.jegi.com/resource-center/industry-reports](http://www.jegi.com/resource-center/industry-reports).

### Toward World-Class Capabilities

Each of the six capabilities described here represents a significant change in the value delivered from marketing services. Together, they can be used to carve out a distinctive identity for any marketing services firm – and its clients. Combining different capabilities enables marketing services providers to amplify the value they deliver to clients, and for marketers to take a more strategic view as they engage consumers along the path to purchase. Building world class capability systems is feasible for any company, no matter its history in digital marketing and e-commerce. But it requires strategic choices and management alignment around the business case for investment. It also requires an emphasis on driving transformational change within the organizations: talent, organization, process improvement and technology choices required to build out these capabilities must be in place. Finally, digital marketing requires the application of a coherent strategic filter to M&A and partnership activities to focus capital and bandwidth on the right priorities. ■

Booz & Company ([www.booz.com](http://www.booz.com)) is a leading global management consulting firm, helping the world’s top businesses, governments and other institutions.



# JEGI Private Equity Forum: *The Evolution of Social Media*

On Thursday, September 22, JEGI held its annual Private Equity Forum and networking event at the Four Seasons Restaurant in New York City. The event brought together private equity senior executives with an investment focus on the Media, Information, Marketing Services and Technology sectors.

Sponsored by the law firm Morgan, Lewis & Bockius, the event was titled Social Media: Looking Ahead to 2012 and Beyond. In welcoming the attendees, Wilma Jordan, JEGI's CEO, noted that the evening's focus was in response to the "quickly expanding and transformational role that social media is playing in the evolution of the media and technology markets."

## Keynote Speaker: Jeffrey Dachis, CEO, Dachis Group

In 2008, Jeffrey Dachis, who launched Razorfish over a decade ago, founded Dachis Group to "help unlock the value of social technologies for large corporate enterprises across three main practice areas: Social Business Strategy; Social Business Engagement; and Social Business Intelligence."

In his Keynote, Dachis spoke of the urgent need for companies to harness the power of social "technology" to engage their customers, employees and other relevant communities in an open and ongoing dialog. Backed by Austin Ventures, Dachis Group, in its role as agent of this essential evolution driven by social media, helps companies, including 15%+ of Fortune 500 companies, identify their opportunities and then helps select or customize the design of an integrated set of scalable and secure enterprise class tools to implement them.

Some of the key points made by Dachis:

- ▶ Despite the social media explosion, most companies have not adapted their technology systems, processes or cultures to their benefit;
- ▶ Companies must move beyond the industrial economy's approach of working in silos and build network centric organizations to tap into the networked economy;
- ▶ Inescapable trends in society, the workplace and technology require fundamental changes in systems, process, and culture;
- ▶ Companies that don't adapt by embracing change will have a profound disadvantage; and
- ▶ Social Business will require new distributed, collaborative and agile organizations to overcome current barriers to growth and create new value.

## Marketing Services M&A Update

JEGI's Co-Presidents, Scott Peters and Tolman Geffs, gave a presentation on marketing and interactive services M&A, the most vibrant sector of the 10 tracked by JEGI, in terms of overall deal volume and value, through Q3 2011. Diversified ad agencies, large tech and media companies, as well as increasing private equity interest in the sector are driving this activity.

Geffs pointed out that, within the marketing services sector, the strongest interest was in Ad & Digital Agencies, Ad Networks, Data & Analytics, Market Research & Technology and Social Media Marketing, which together accounted for 108 of the 129 first half 2011 transactions. He also pointed to the higher transaction multiples for online media, as well as Interactive Marketing Services, as compared to the more traditional media.

Turning to the social media topic, Geffs introduced JEGI's Social Media Landscape, identifying not only some of the major media platforms, but also the key players in direct to consumer initiatives as well as suppliers of Agency/Data Tools, Enterprise Tools and Publisher Tools (see below). Some social media highlights:

- ▶ According to a Forrester survey, over 50% of marketers planned to increase their use of social media tactics in 2011;
- ▶ Social network advertising is expected to grow from nearly \$3 billion in 2011 to \$7.6 billion by 2015 (eMarketer); and
- ▶ Social media are flooding the ad market with low cost inventory, putting pressure on established media.

## 2011: Things Have Changed

On the legal front, Charlie Engros, Managing Partner, Morgan Lewis offered an insightful and entertaining view of some major changes affecting M&A transactions in 2011. At the top of his list were changes to HSR that were Good (some streamlining of the form), Bad (expanding the types of documents that must be submitted with the HSR form), and Ugly (the new concept of "associates", requiring PE and hedge funds to submit information on the activities and ownership of "commonly managed entities", a development of particular duress to firms managing multiple funds). Engros also discussed several key trends in private deals, most notably that public terms were increasingly finding their way into private deals (e.g., reverse breakup fees, fiduciary outs, and MAE bring-downs). ■



# Outsell's Signature Event: Finding Revenue in All the Right Places (cont.)

(continuation of Anthea Stratigos's presentation)

EMEA (Europe/Middle East/Africa), respectively, from 2006 to 2011. Within a few years, it is likely that the Asia Pacific region will drive more revenue than Europe.

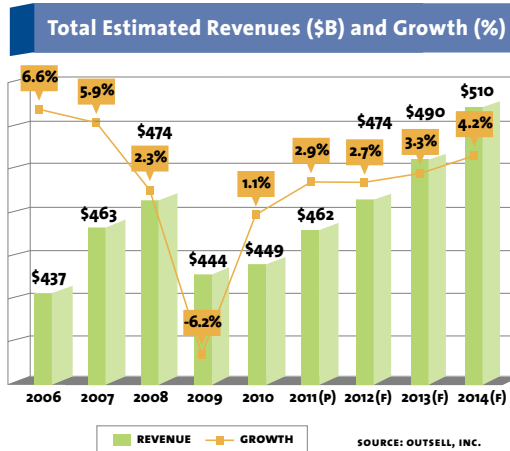
**March to Digital** The march to digital continues to progress for the information industry. Many segments of the industry still have print imprints, including books and magazines. Currently, digital continues to grow at a 10% to 30% rate across the major sectors that have historically had their roots in print.

**Five Technologies to Watch** The following five technologies to watch, which are of immediate and high importance are: HTML5 (language for structuring and presenting content on the web); noSQL (database management system); tablets; APIs (code that enables software programs to communicate with each other); and social messaging.

## 10 Key Trends That Matter

- 1. Emerging Markets:** Latin America, India and China are expected to continue growing and transforming the marketplace.
- 2. Changing Customers; Tight Budgets; New Buying Models:** Customers are changing to service evolving markets, like healthcare, education and legal; budgets continue to tighten, so new buying and delivery models are emerging.
- 3. Mobile; Social:** Mobile and social are changing information creation and delivery; Google, Apple, Facebook and Amazon (GAFA) are the key leaders in these markets.

**4. Big Data:** All devices are data making machines, so the phenomenon of big data is just starting to emerge. Many new start-ups are harvesting and analyzing data for decision support, embedded into the workflow.



**5. Focused Scale:** There are several emerging data-driven companies in workflow-related, niche-oriented segments. The big players are orienting around focused scale. Pearson is focused on education; McGraw is being split into two companies; Thomson is exiting health; etc.

**6. M&A; Value Chains; Convergence:** With its acquisition of Pangea3, Thomson Reuters entered into the provisioning of legal services, essentially their customers' markets. Google's acquisition of Zagat is a move up the value chain, as it becomes a content owner. Hearst acquired interactive marketing services company iCrossing; etc.

**7. Aggregation's Persistent Call:** The more noise there is in the market, the more need there is for aggregation to provide sanity and meaning. The number of apps, for example, are being narrowed down to just a handful that are key for people. There is still a place in the market for branded, authoritative sources.

**8. Fun, Gamification and Philanthropy:** A growing area is gamification, which is utilizing a game design in business environments as a learning tool and to drive engagement. Another area is companies using more fun, emotion and philanthropy to engage with their clients. There's room for more human and emotional connection to the clients we're serving. Consumer trends tend to pervade the information industry, and this is a phenomenon in its early stages.

**9. Human Assistance – Service & Culture:** When looking at Twitter, LinkedIn, etc., we're seeing more user communities coming together to provide support and/or better customer service. The more things go digital, the more important is the human component.

**10. Sales 2.0 and the Industry Dilemma:** Sales, more than ever, can now be done over the web, a radical change in the way services are sold. When looking at the information industry, many companies are lagging in the sales function and have not caught up to changes in the market. This is an Achilles Heel for the industry, which needs to develop sharp sales talent to take companies forward.

## The Economic Outlook

Michael Boskin, Professor, Stanford University & Senior Fellow, Hoover Institute

I'm "cautiously optimistic". There are a number of issues and policy concerns that will determine our economic direction, but probably the most important factor to our long-term growth will be technology innovation. Also of importance will be the Federal Reserve and its ability to prevent inflation; and then as a society, how far we move toward a European-style social welfare state.

In the most recent downturn, four big storms interacted to cause an economic tsunami: government social engineering of the housing market; monetary policy by the Fed, keeping interest rates artificially low; breaking the link between originating a loan and carrying its risk; and allowing banks, investment banks, and large institutions to leverage to dangerous levels, especially relying on short-term credit markets for funding. In comparison to economic recoveries following previous recessions, this one has been anemic. Employment has barely recovered, and household wealth has remained substantially down from its peak in the 1990s.

Focusing on the government's response to the financial crisis, it's important to ascertain what worked and what didn't work, because this will affect government proposals going forward. The TARP (Troubled Asset Relief Program) program was a success. Had capital not been made available to the banks in the fall of 2008, the economic impact would have been much worse than it was. The Fiscal

Stimulus program didn't work. Unemployment levels have remained above 9%.

### GOING FORWARD

The blue chip consensus outlook is for modest growth. US GDP is forecast to grow at 2% to 2.5% on a quarterly basis through the end of 2012, but this will only reduce unemployment a bit, and is actually an anemic recovery following a deep recession. Historically, the economy has recovered at 5% to 6% GDP growth following a deep recession.

### 10 key factors affecting the economic outlook:

1. Natural business cycle dynamics, inventories, and the global supply chain rebalancing with demand;
2. Credit: we have still not resolved all the toxic assets sitting on banks' balance sheets; small businesses are still having difficulty getting credit;
3. Household balance sheets: consumers are still trying to rebuild their balance sheets; saving is the new norm;
4. Housing: some markets have still not found their bottoms and inventories are at historically high levels;
5. Capex: businesses are spending;
6. Labor market: uncertainty has led businesses to hold on hiring;
7. Government policy: the best thing for the economy would be to create some certainty by providing guarantees of medium and long-term economic policies that are sensible; this would include tax reform and fiscal consolidation and spending control on entitlements;

## BIG DATA

Andre Dua, Director, McKinsey

Growth tends to come from two areas: population growth or productivity improvements. Over the past 30 years, US population growth has slowed significantly, so growth has come primarily from productivity improvements. However, over the past several years, productivity growth has also slowed.

Big Data, large pools of data that can be captured, communicated, aggregated, stored and analyzed, plays a big role in innovation and driving productivity. The size of these data sets will keep changing, along with the ability of tools to analyze them. Depending on the industry, a big data set might be a few dozen terabytes (one trillion bytes) up to multiple petabytes (1,000 terabytes).

### Key Findings

- ▶ Data have swept into every industry and business function and are now an important factor of production – data is being generated at an annual growth rate of 40%;
- ▶ Big Data creates value by improving productivity;
- ▶ Big Data is a key differentiator for companies; those employing big data greatly enhanced their returns to shareholders and outperformed companies that were not effectively utilizing big data;
- ▶ Big Data will underpin new waves of productivity growth and consumer surplus;

▶ Big Data will help some sectors more than others, depending on the opportunity to capture data and the opportunity to use them; and

▶ Big Data talent will be in short supply across analytical, programming and management skills; the shortfall could be 1.5 million over the next several years.

To put the amount of data being collected into perspective, the average securities and investment services firm with more than 1,000 employees has 3,866 terabytes of data. By comparison, the Library of Congress's full collection comprises 235 terabytes of data.

### Factors Driving Opportunity in Big Data

Most companies don't use or discard the data they capture. For example, health care providers typically discard 90% of captured data; most of this is real-time video feeds during surgery. Data is also being generated as a byproduct of other physical activities (e.g., for running, the Nike Apple tool will generate data). This subsidiary data provides a potentially tremendous opportunity.

The use of analytical tools and methods, such as predictive modeling, neural networks, etc. are becoming more widespread. The global grid, or the "internet of things", is expanding exponentially; this comprises all the sensors and devices that are embedded in the physical world. Suddenly, there is a vast grid of machines and sensors talking to each other, and this generates a large amount of additional data; and computational capacity is available and cheap.

## Five Ways Big Data is Creating Transformational Value

**1. Helping to create transparency:** Making data that's available in one department available across all departments radically reduces the search time and processing that is required to take advantage of that data and can compress product development time and reduce cost.

**2. Exposing variability and enabling experimentation:** By looking at data in different ways, one can see variability in how different populations or groups are performing. For example, Delaware, New York, and Ohio are spending nearly \$9,000 per capita on health care. Meanwhile, Arizona and California are spending approximately 40% less.

**3. Segmenting populations to customize actions:** This isn't a revolutionary concept in some industries, such as marketing or risk management, but the public sector has only begun to think how it can segment populations.

**4. Replacing/supporting human decision-making with automated algorithms:** The IRS can use algorithms to project who it should be auditing, which is driving greater efficiency for the organization. Retailers can use algorithms that allow more real-time fine-tuning of inventory and in-store management.

**5. Innovating new business models, products and services:** Big Data will drive new business models, products and services. Zillow is a great example of a company that has taken publicly available data to figure out the value of real estate anywhere in the country, with the help of algorithms.

*(continued on page 6)*

8. Inflation and monetary policy: Bernanke thinks there is virtually no risk of inflation;

9. Oil prices: energy prices are always a risk to economic recovery and have proven difficult to predict; and

10. Global economic recovery and financial stability: it's likely that the Europeans will eventually do the right thing, after they exhaust all alternatives. In the meantime, watch out.

In the short-run, some economic positives include: the Fed is going to continue zero percent interest rates; emerging markets continue to grow, albeit their growth is slowing; corporate balance sheets are very strong, and corporations are sitting on huge piles of cash; and there is a rebound in Japan, as its supply chain is getting normalized. Our current account balance has been cut in half; without this tremendous improvement, we might be back in recession.

### GDP Growth

Around the world, the annual real GDP of developed countries, such as the US, Japan, UK and Germany, is expected to grow in the range of 1-3%, looking out to 2016; while for emerging countries, including China, India, Russia and Brazil, the annual growth rate in that time frame ranges from 4% to 9% (see accompanying chart), according to the International Monetary Fund (IMF).

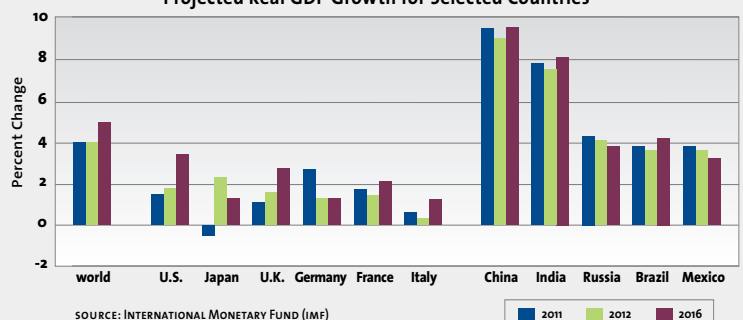
Currently, the US federal deficit is over 9% of GDP. Our national debt is heading higher, toward ever more dangerous levels. We desperately need to get this under control to have solid long-term growth.

The US has had a disturbingly long-term secular increase in the number of people getting benefits from the government, along with a decrease in the number of people paying income taxes. In 2009, 49% of Americans paid income taxes, while 47% received benefits from the government. It is very risky for a democracy to run this way, and this could ultimately affect the long-term growth ability of the country.

### CONCLUSION

I'm cautiously optimistic; however, there is the possibility of a stronger recovery taking hold given the large amount of cash on corporate balance sheets, the confidence that might come from government policy improvements, and a stabilization and recovery of Europe. ■

Projected Real GDP Growth for Selected Countries



**Question:** What is McKinsey suggesting in regard to how we develop the talent that will help us take advantage of Big Data?

**Response:** One area that the President's Council on Job Creation is focusing on is the gaps between the skill required and the skills the workforce has. Bodies such as these will make recommendations at the policy level about how to develop needed skills.

The educational institutions need to do a much better job of understanding the skills needed by the market. Currently, the educational industry is not delivering a product properly tied to the coming global economy. There is a real opportunity here for education providers, and we are going to see a lot of innovation in this area over the next 10 to 20 years.

At the company level, the key issue is identifying pockets of talent and being more creative about non-traditional sources of talent. What talent lies in adjacent industries; what talent has underlying skills and capabilities, but might not yet have the direct skills needed? This talent can be retrained to learn these new skills, but a value proposition needs to be developed that would entice them to leave their current endeavors. Certain emerging companies have been very successful in developing talent from non-traditional sources - see Google, Facebook, etc. They have also been successful at acquiring companies for the talent base.

## ANNUAL M&A OUTLOOK

Adam Gross, CMO, JEGI

M&A activity has been steady in 2011 through the first three quarters of the year, with total deal value up 10% over 2010. Strategic buyers continue to dominate the M&A market, as

## M&A Conversation

**MODERATOR:** Wenda Harris Millard, President & COO, MediaLink

**GUEST SPEAKER:** Andrew Prozes, Senior Advisor, Warburg Pincus

**Ms. Millard:** When you were at LexisNexis, you made about 40 acquisitions. How did you know when you had the right deal?

**Mr. Prozes:** I don't think anybody really knows that it's the right deal. At LexisNexis, we probably looked at 600 different opportunities during my time. For strategic companies, the deal has to be a strong strategic fit, with good revenue growth (mid-teens+ percentages); the potential to reach 25%-30% EBITDA margins; quality revenue (recurring); and perhaps the most important factor is the sustainability of the product advantage.

**Ms. Millard:** Do you think the environment today is more chaotic than it was 10 years ago (i.e., the number of companies in the "ecosystem" and sorting out who does what)?

acquisitions help companies evolve their business models, accelerate growth and drive new revenue streams. Strong balance sheets, with U.S. non-financial companies holding approximately \$2 trillion in cash. Recent examples include Bloomberg's acquisition of BNA to beef up its content offering via its terminals for nearly \$1 billion; and Reed Elsevier's acquisition of Accuity as a highly complementary fit for its Banker's Almanac and the financial services business of LexisNexis for \$500+ million.

Private Equity firms have become more active recently and have nearly \$400 billion of investable capital sitting on the sidelines. Leverage for companies with EBITDA of more than \$10 million is available, and the capital markets are improving overall. We have seen several \$100+ million deals recently across media and information, including: Providence Equity Partners' acquisition of George Little Management, the U.S. trade show division of Daily Mail and General Trust, for approximately \$180 million; and New Mountain Capital's acquisition of financial information provider SNL Financial for nearly \$400 million.

Emerging media (interactive, marketing services and mobile) are driving M&A activity (see accompanying chart). These sectors accounted for 73% of M&A deals in 2011 year-to-date, and the number of deals in these sectors increased 7% over 2010 levels. The total number of deals across all media and information sectors was relatively flat, however, due to a 16% decline in M&A activity across traditional sectors. Emerging media sectors are generating an average deal size of approximately \$44 million vs. \$68 million for traditional media,

but that gap is quickly shrinking as emerging companies scale.

Emerging Media Driving M&A				
	# of Deals 2010YTD	# of Deals 2011YTD	% Change	Avg. Deal Size - 2011 (millions)
Emerging Media	472	504	7%	\$44
% Total	68%	73%		
Traditional Media	226	190	(16%)	\$68
% Total	32%	27%		
<b>Total Deals</b>	<b>698</b>	<b>694</b>	<b>(1%)</b>	<b>\$51</b>

TRADITIONAL MEDIA: B2B MEDIA; CONFERENCES & EVENTS; CONSUMER MAGAZINES; DATABASE SERVICES; EDUCATION; AND HEALTHCARE

SOURCE: JEGI TRANSACTION DATABASE NOTE: YTD IS THROUGH Q3

## M&A Outlook

When preparing an M&A outlook, there are three great unknowns: the economy; the debt markets; and the political climate. A key to a healthy M&A market is confidence, and we have started to see business confidence return, as the stock market is up for the year and banks are actively lending for larger companies. The political climate still seems challenged, but we are confident that this will work itself out in the election year ahead.

In our view, the tide is starting to turn, and 2012 will see a more active M&A market than 2011. Strategic companies will put their capital to work on acquisitions to enhance growth and diversify revenue streams. Private equity firms are bringing portfolio companies to market that were acquired in the mid-2000s. Across the board, acquisitions that transform existing business models, such as those in the digital marketing services and mobile sectors will continue to increase. ■

**Mr. Prozes:** It can be chaotic in the private equity world, because there are no restrictions on the number of sectors to review - as long as it's a large and attractive sector and an appealing business target. For strategics, it isn't as chaotic, because it has to be a strategic fit with what you are already doing. So, the strategy is much better defined.

**Ms. Millard:** Seisint was a \$775 million acquisition for which you had about two weeks to finish due diligence and make a decision. How did you do that?

**Mr. Prozes:** One of the greatest things about that deal was that we only had two weeks. If we would have had six weeks, we might have created a bunch of reasons not to do the deal. When the opportunity was brought to our attention, a deal was already in place to sell the business to ChoicePoint. The bankers involved told us we had two weeks to complete due diligence and make an offer. Seisint was well-positioned in the risk solutions space, because it provided probably the best technology to process public records to produce profiles on people. Seisint had all the right

ingredients and strong internal support within Reed Elsevier because of the strategic fit with our Risks Solutions strategy.

**Ms. Millard:** What about the ChoicePoint acquisition? Did that take more than two weeks?

**Mr. Prozes:** ChoicePoint fit perfectly with our risk solutions business, and therefore, we paid a hefty premium. I would argue that it's the best acquisition Reed Elsevier ever made. To answer your question, it took three years and seems like 18 presentations to the board, until they finally nodded their heads.

**Audience:** Could you tell us a little bit about the difference in process of transactions by private equity versus strategics?

**Mr. Prozes:** Private equity firms have a much more rigorous financial due diligence process, with a greater and more in-depth focus and review of financials. Strategic companies look very carefully at the financials, but are usually more focused on the strategic fit, product advantages and sustainability. ■

# An Intellectual Property “Check Up”: Speeding Up IP Due Diligence

By David Leichtman and Oren Langer, Attorneys, Robins, Kaplan, Miller and Ciresi

With the ongoing convergence of media and technology for content delivery and advertising creation, prospective acquirers are targeting a greater array of businesses for which much of the value lies in the technology. However, buyers are cautious about technology and want to make sure that it has been properly vetted and presented. Specifically, buyers need to know if there are any issues with the technology that could impact value; they want to confirm ownership of the technology and understand the full range of associated intellectual property (“IP”) rights.

Recent news is full of reasons why it is important for sellers to maximize the value of their IP portfolios. To avoid ending up in a courtroom or arbitration, every prospective buyer must do more than just scratch the surface in IP due diligence. As the seller, telling a positive story about the measures taken to: (a) ensure the validity and enforceability of your own IP rights; and (b) assure the buyer that your technology is free and clear of claims by others, is imperative, not only to get maximum transaction value, but also to help achieve a speedy and problem-free closing.

When preparing for an eventual sale, it is important to consider the following: (i) the merits of an IP audit, which is an excellent tool to identify and help present your IP rights in a positive light, while speeding up the due diligence process; (ii) what gaps in your IP protection an IP audit may reveal and how different strategies can close those gaps to increase company value; (iii) what buyers care about, with respect to both “offensive” and “defensive” IP issues in the sale process; and (iv) what the issue of “divided infringement” is and why it matters to sellers and buyers in the media and information industries.

**An IP Audit Before You Sell** From a buyer’s perspective, the scope, depth, and budget available for IP due diligence depends on the structure and business goals of the underlying deal. Diligence requirements will often differ for IP auctions, venture-based financing, strategic alliances, spin-outs, or mergers and acquisitions. The scope of the due diligence, however, is usually determined by the magnitude of the business transaction. The more that a seller’s IP rights are integral or represent a significant proportion of the transaction’s value as a whole, the greater the diligence it merits.

When investors back companies that have technology with commercial potential, they need to maximize their market protection from competition. A company’s IP portfolio (patents, trademarks or service marks, trade secrets, copyrights), and particularly patents for technology-driven companies in fast-changing markets, is the “currency” of the target company, and it must be valued appropriately. But buyers often don’t want to spend either time or resources on IP diligence, if the story is too complicated.

That is why potential sellers should consider pre-packaging their diligence with an IP “check-up” or audit, well in advance of the day they decide to sell. The amount spent on the audit ought to reflect the relative importance of the IP rights in an anticipated transaction. IP counsel can provide a range of services at different price points, depending on the extent to which your IP portfolio needs some assistance with presentment. For example, it could range from being focused on a single patent or part of your business to a series of detailed and thorough studies, going into each technology area of your company. If the assets are protected by copyright, the inquiry might focus on chain of title, the availability of termination rights in a catalog, or other contractual issues that could impact the long term ability to exploit the IP rights.

Think of an IP “check-up” or audit as a valuation tool. A seller can use it to: discover under-utilized assets; identify any IP weaknesses that may threaten the company’s value or attractiveness to prospective investors (e.g., identifying how to address patents that may fail validity checks, based on emerging court decisions); and develop cogent strategies that could increase the value of the target company. An IP audit report can be used to honestly portray the company’s position in the market and outline potential competitive threats. If the seller’s audit is well-prepared, the buyer may forego or lessen its own independent analysis, saving time in the diligence process.

**How To Enhance Your Company’s Value** Discerning the type and strength of IP protection that can be obtained on a company’s assets is vital for valuation. For example, it is not always true that issued patents are worth more than patent applications. Sometimes, those patent applications are for the next generation technology that represents where the market is heading. In such early stage cases, a buyer’s review of pending applications becomes an important part of the process that could slow diligence down. In short, a robust summary of a seller’s IP filing status can be important, as can identifying and correcting any gaps in patent filings prior to a sale.

Many start-up companies lack adequate funding and may leave their technology or other IP assets unprotected to avoid excessive filing costs. However, a “check-up” can identify simple steps to secure good IP protection, such as identifying a program for recording “chain of title” changes in a catalog; training company employees to make regular copyright and trademark filings; or enhancing protection through good contract drafting, in collaborations with third parties, wherein information about the technology may be disclosed. Proper assignment of patent rights and recording the same is a must, as is the early resolution of any uncertainties about inventorship.

**What Matters To Buyers** But what about “defensive” threats to IP assets? While it seems obvious that a potential buyer is going to take any pending IP litigation into account in determining the price it might pay, a seller can proactively take steps to lessen the impact of a buyer’s argument for a concomitant decrease in value.

IP litigation is expensive, and most executives believe large damages are usually at stake. However, that is not always the case. Courts (and arbitration panels) are increasingly making it harder for large damage awards to stick. Accordingly, a seller should put itself in a position to explain to a buyer the merits of a claim and what impact, if any, a verdict could have on the value of the assets being sold.

A buyer will also want to know about claims that could be asserted. A proper IP “checkup” can ferret out such potential claims and prepare you

to answer questions about them in a positive light, before the buyer makes its own assumptions, which could either delay or halt a closing.

**The Quandary of “Divided Infringement”** Recent court decisions in both patent and copyright disputes try to answer the question: who is liable for what conduct when a third party’s IP rights implicate multiple parties who participate in a chain of distributing content, products or services. Since technology masks who is involved in the stream of delivering content (such as the case with music, audiovisual works, apps and games) or other digital products to the marketplace, the solution takes on a new dimension that previous case law did not have to address. Courts are struggling to strike a balance between adequately enforcing property rights to protect innovation and keeping property rights within the boundaries of what was invented. Courts are also struggling to determine what role, if any, contract rights should have in deciding such disputes, wherein the parties participating in the distribution chain have apportioned responsibility among themselves.

A seller could be on either side of these issues – either as an owner of the IP rights being infringed by multiple parties or as a participant in a distribution chain. An IP “checkup” can be used in either case. First, it can be used to determine whether amendments to pending IP filings should be made in order to ensure that a company’s valuable IP rights can actually be enforced when a distribution chain is using products or methods covered by that particular IP. An IP audit may further uncover ways to better protect against a claim of IP infringement, if the defendant company is participating in the chain of distribution.

**Conclusion** No two deals are the same, but by undertaking an IP “checkup” when preparing for an asset sale, you can streamline the process and gain insights that can be used to make the assets more marketable to prospective buyers. At a minimum, it can help to aid the discussion of value and, not least of all, increase the speed and probability of closing. ■

*Robins, Kaplan, Miller and Ciresi ([www.rkmc.com](http://www.rkmc.com)) is a national US law firm focused on business, technology and intellectual property, among other markets.*

*“The more a seller’s IP rights are integral or represent a significant proportion of the transaction’s value as a whole, the greater the diligence it merits.”*

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