
Introduction

The purpose of this chapter is to provide an overview of this research, including the research field, research background, objectives, questions, and research flow. This research shows how to use intellectual property as an effective tool for marketing and further discusses important strategies and concepts that are rarely analyzed in previous studies, textbooks and publications in the field of marketing and sales.

At first, the focus and scope of this research is defined in Figure 1.1. The “portals” are the chosen field for this research because these companies start taking advantage of its channel function. For example, although it is a test for Google Video—one of the search giant Google’s Web portal-like service, Google Video provides 2000 free videos which are from professionals, not amateurs. Now Google Video is not only a service but also is trying to “act” like a content provider—in fact, it is still a bridge between content providers and content consumers. Therefore, it is important to understand this coming transformation of the industrial structure and so this field is the subject of this research.

Basically, the digital content industry covers a broad range of businesses, but there is still no generally accepted definition in the world. Meanwhile, not all governments support the industry promotion policy and strategy, instead of the market-dominant policy and strategy that is supported in the U.S.A.¹. No matter how the scope of digital content industry is defined², two basic elements establish it –

¹ CORDIS (Community Research & Development Information Service) (n.d.). *eContent*. Retrieved September 2, 2005, from <http://www.cordis.lu/econtent/>

Digital Content Association of Japan (DCAJ). Retrieved September 2, 2005, from <http://www.dcaj.org/outline/english/index.html>

Digital Object Identifier (DOI). Retrieved September 2, 2005, from <http://www.doi.org/>

Forfás (n.d.). *A strategy for the Digital Content Industry in Ireland*. Retrieved September 2, 2005, from <http://www.forfas.ie>

Industrial Development Bureau Ministry of Economic Affairs (2004). *2003 Digital Content Industry in Taiwan*. Retrieved October 29, 2005, from http://www.digitalcontent.org.tw/dc_p5.php [Text in Chinese]

Industrial Development Bureau Ministry of Economic Affairs (2005). *2004 Digital Content Industry in Taiwan*. Retrieved October 29, 2005, from http://www.digitalcontent.org.tw/dc_p5.php [Text in Chinese]

² For example, the scope of digital content industry in Taiwan includes digital game, computer animation, e-Learning, digital video & audio, mobile application & services, network services, content processing software, and e-Publishing & digital archiving. The scope of digital content

“content” and “technology” (information technology or digital technology). In other words, a product that is created by using technology and digitizing³ content belongs to this industry⁴. Thus, for this reason, it is best to think of the digital content industry in the broadest context and so this writer uses the simplest and most generally accepted definition in this research. The general view of the industrial structure and its examples are shown in the Figure 1.1.

The Figure 1.1 exhibits four elements, content creators, content providers, portals and devices (manufacturers), forming the industrial structure. Depending on various types of products or services, a product/service goes through different processes to reach end users. “Content” certainly is the origin of the digital content industry, so copyright is the most important intellectual property in this industry. Content creators can be individuals or employees of a company, such as an article writer or a software programmer. In order to make “content” to be available for access, after the content is created, the role of content providers begins. The general functions of content providers are to “package” the content and to plan how to make it available to end users. Therefore, content providers can also be either individuals or a company. For example a writer transforms the Microsoft Word format of an article into the Internet-accepted format (e.g. .txt, html or .xml), or a movie production company applies Digital Rights Management (DRM) to its digital-video products. Then, end users utilize various channels (portals) and devices to obtain products or services. However, as mentioned above, currently some channels start expanding its role in the industry. As for “merchandising”, this is one characteristic of this industry. Content providers can license out the image (e.g. marks) of its products or services and sometimes this can be an important source of profit. For example in order to attract attention and promote a movie, a movie production company may partner with MacDonal and Toys 'R Us to launch movie related

industry in Ireland includes game, digital libraries, e-Learning, business and consumer telematics/wireless services, and non-media applications. See Forfás, supra note 1. Institute for Information Industry (Taiwan, R.O.C.) (2004). *Digital Content Industry in Taiwan*. Retrieved September 2, 2005, from <http://www.find.org.tw/eng/news.asp?msgid=100&subjectid=5&pos=0>
 Australian Government Department of Communications, Information Technology and the Arts and the National Office for the Information Economy (NOIE) (2004). *Creative Industries cluster study – stage one report*. Retrieved September 2, 2005, from <http://www.cultureandrecreation.gov.au/>
 See Industrial Development Bureau Ministry of Economic Affairs (2005), supra note 1. [Text in Chinese]

³ The usage of “digitalization” differs from “digitization”. Digitization is a process by which electrical signals in the analog domain are converted to the digital domain, such as the scanning of analog photos and video into computers for editing. Digitalization is, the socio-cultural phenomenon worked from the mass scale digitization of everything digitizable.

Dasgupta, P. (2001). *Digitalization*. Retrieved September 2, 2005, from <http://cactus.eas.asu.edu/partha/Columns/12-24-digital.htm>

⁴ Commonly this product is called “digital products” or “digital goods” such as music, computer software and books.

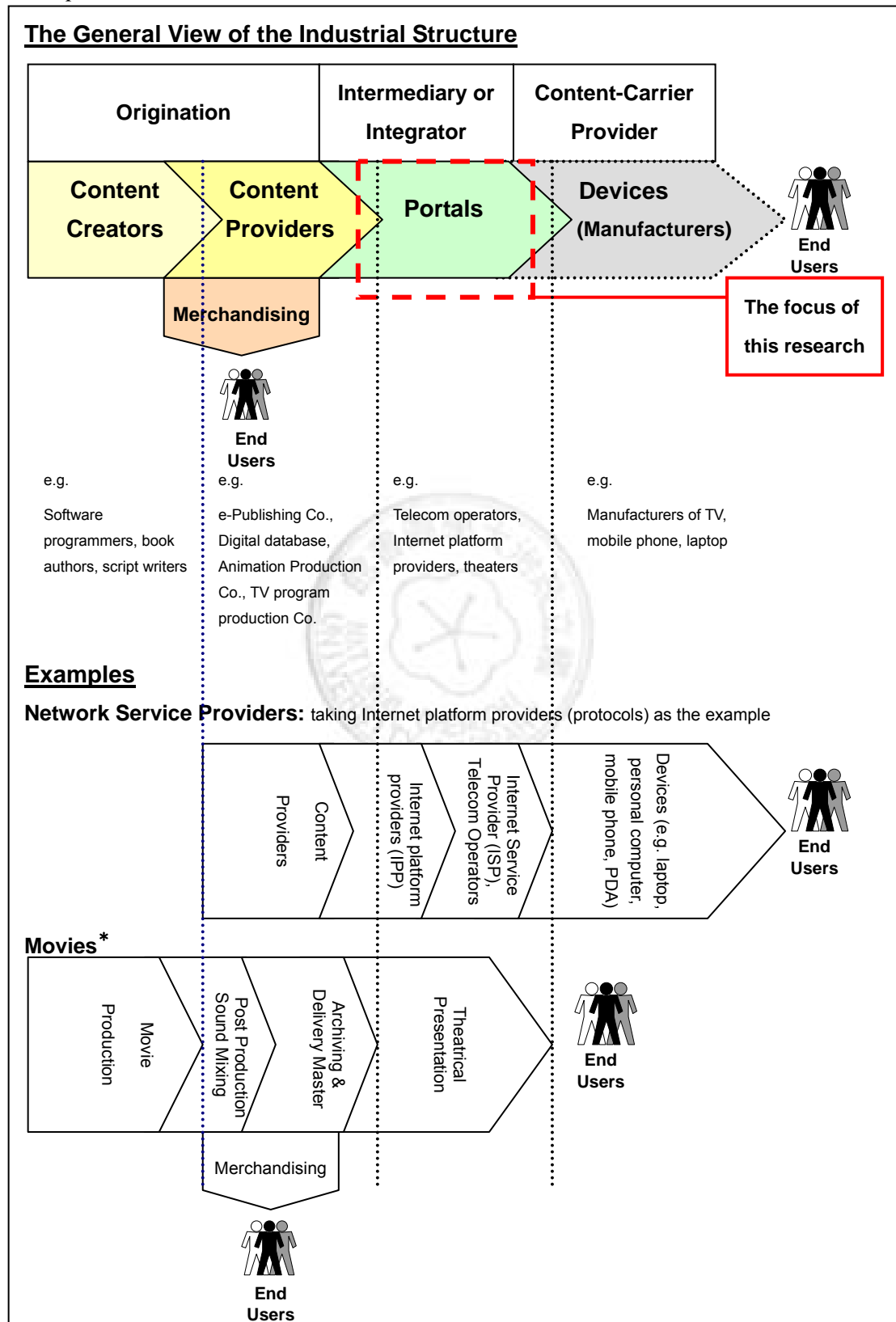
Planning Intellectual Property for Marketing Strategies
in the Digital Content

dining, a toy, a computer/television game, or clothes. On the other hand, “merchandising” has become a common promotion method for a company to obtain the awareness of its brand image. Since there is a broad range of businesses in this industry, this research focuses on the companies who play the role of a portal thereby letting users access the content.



Figure 1.1

The General View of the Industrial Structure in the Digital Content Industry and Examples



* This example merely targets consumers who go to movie theaters, excludes consumers who use

other channels such as DVD/ VCD rental stores or the Internet.

1. Research Background

1.1 Intellectual Property (IP) Power

This is now common for industries not only to recognize intellectual property as the most significant asset of a company, but also take intellectual property as valuable groundwork for the potential continuing profits and market ascendancy of a company⁵.

Infringing others' intellectual property rights (IPRs) may lead to severe consequences, such as NTP Inc. v. Research in Motion Inc. (RIM). In 2001 NTP accused RIM (the maker of the BlackBerry e-mail device) of infringing on their patents, since then this prolonged litigation has haunted RIM and stirred up growing concerns among this more than four million BlackBerry subscribers, who were afraid that their service would suddenly end. Finally, in March 2006, RIM settled its long-running patent dispute with NTP to avoid a possible court-ordered shutdown of the BlackBerry system. This settlement ended a period of anxiety for the millions of BlackBerry users. Under the agreement, RIM received a license to NTP's patents and paid \$612.5 million to NTP. Even if the U.S. Patent and Trademark Office ultimately overturns NTP's patents, NTP will not have to return the \$612.5 million. "There is no provision for the PTO re-exam. This is a full and final settlement," RIM co-CEO Jim Balsillie said⁶.

The value of many businesses such as IBM or Microsoft comes from their intellectual property. Take "patent" as the example, J. P. Jou, ex-General Counsel of Hon Hai Precision Industry Co., Ltd ("Foxconn⁷"), with 20 years of industrial

⁵ Choi, T. Y., Budny, J., & Wank, N. (2004, January-February). Intellectual property management: A knowledge supply chain perspective. *Business Horizons*, 47(1), 37-44.

Rivette, K., & Kline, D. (2000, January). Discovering new value in intellectual property. *Harvard Business Review*, 78(1), 54-66.

Rivette, K. G., & Kline, D. (2000). *Rembrandts in the attic: Unlocking the hidden value of patents*. Boston, Mass.: Harvard Business School Press.

See *Chinese Ref. 7*, at 193-197.

See *Chinese Ref. 2*.

Yue, Xian-ping, & Gu, Hai-ying (2005). On the mechanism and behavior of patent licensing of foreign firms. *China Soft Science*, (5), 89-94. [Text in Chinese]

⁶ Tom Krazit, & Anne Broache (2006, March 3). BlackBerry saved. *CNET News.com*. Retrieved March 5, 2006, from http://news.com.com/BlackBerry+saved/2100-1047_3-6045880.html

Tobias, C. (2006). *Bye-bye BlackBerry? Patent problems with patent litigation*. Retrieved March 5, 2006, from <http://jurist.law.pitt.edu/forumy/2006/02/bye-bye-blackberry-patent-problems.php>

⁷ Foxconn is the registered trade name for Hon Hai Precision Industry Co., Ltd. Hon Hai is a global leader in providing mechanical solutions. It is the largest manufacturer of connectors for use in PCs in Taiwan, and a leading manufacturer of connectors and cable assemblies in the world. The company

experience has pointed out, having “quality” is the prerequisite of becoming a valuable patent, yet a valuable patent is the actualization of a patent’s quality. In other words, a quality patent should go through an overall “examination” that is a process which includes the steps of (1) comprehensive retrieval; and (2) comparison and analysis of all prior-art, non-patent literature and the industrial news. Afterwards, this patent may be valuable. He also suggests that valuable intellectual property should fulfill the following conditions: (1) should be the indispensable technology in a specific (technical) field; (2) can not be replaced by other substitutive technology; and (3) is unable to let the others design around. Finally, this patent should withstand the challenge from potential infringers or competitors and make it hard for them to advocate this patent is invalid or not industrially applicable. Then, this invention truly is worthwhile and perhaps has economic value.

Indeed, there is an on-going battle all over the world with respect to the protection of intellectual property owned by many international companies. On the other hand, it is very common now that small companies and individuals allege those established companies have infringed their intellectual property rights. They seek damages caused by the alleged infringement and try to extract a major settlement from those “deep pockets”, such as in the case *Rates Technology Inc. (RTI) v. Google Inc.*⁸. Therefore, managing the flow of intellectual property and putting intellectual property into practice have become major concerns for companies.

1.2 Innovation Phenomena

Schumpeter, a giant in the history of economic thought, indicates the central features of a modern economic system are innovation and change⁹. Although that

also manufactures enclosures, primarily for desktop PCs and PC servers. Since its listing in 1991, the Company has grown significantly in terms of revenues and profit. It now has a market capitalization of over \$6 billion USD. Retrieved January 3, 2006, from

<http://www.foxconn.com/about/introduction.asp>

⁸ In October 2005, RTI filed suit against Google in federal court in New York, arguing that Google Talk VoIP services and related products have infringed on RTI’s two patents (U.S. patent number 5,425,085 and 5,519,769).

LeClaire, J. (2005, December). Google sued over patent infringement. *E-Commerce Times*. Retrieved February 5, 2006, from

<http://www.technewsworld.com/story/18rYCREwe6NOrr/Google-Sued-Over-Patent-Infringement.xhtml>

⁹ Leonard, G. K., & Stiroh, L. J. (Eds.) (2005). *Economic approaches to intellectual property policy, litigation, and management*. White Plains, N.Y.: NERA Economic Consulting.

Department of Economics of the New School for Social Research (N.Y.) (n.d.). The history of Economic Thought website. *Joseph A. Schumpeter*. Retrieved January 3, 2006, from

<http://cepa.newschool.edu/het/profiles/schump.htm>

The *Wall Street Journal* has called this Austrian economist Joseph Schumpeter as "the most important

applies mainly in the field of production¹⁰ where through rearrangements a new economic process of improved efficiency and lower-cost is gained, his idea should be developed on a wider range. Because in a market economy entrepreneurs combine labor, land, and capital to make a profit, intellectual property commercialization¹¹ and relevant planning and management should be one of the key strategies for such innovation. In short, creativity is the lifeblood of innovation and marketing (Hanna, 2005).

In fact, innovation phenomena have become nonstop episodes in all industries and knowledge such as Godin's "Purple Cow"¹² and recent "Blue Ocean Strategy"¹³ both demonstrate how the action of innovation can transform a company just by doing something extraordinary and this will naturally bring in profits. However, the real key word here is "differentiation".

Nevertheless, none of the popular publications/"knowledge" indicates applications of intellectual property could be an area of innovation. Although most people are still not aware of the problem which leads to a lack of any intention to use intellectual property system (IPS) or intellectual property as one means of innovation, some companies, nonprofit organizations and individuals are already fully implementing such applications. For instance, Navio Systems Inc. (Navio) has created the rights-based model which uses its unique "Rights over IP (Internet Protocol)" (RoIP) technology which separates content "rights" from files. Mainly, Navio takes advantage of the essence of rights which can be acquired, traded, transferred, and redeemed, and much easier to be managed than physical files in the Internet environment, with this model content owners just publish digital content once, and distribute it direct-to-consumers in various mobile environments (devices).

economist of the 20th century." Schumpeter is a protagonist of the mainstream, not in academic economics ("standard textbook economics"), but in economic policy, management studies, industrial policy, and the entire area of innovation. The European Union's innovation program, and its main development plan, the Lisbon Strategy, are based on Schumpeter. Also Schumpeter's important contributions to economic analysis are the theory of business cycles and development that he labels the "four-phases" of a cycle: boom- recession-depression-recovery.

¹⁰ Factors of production include labor, land, capital and entrepreneurship (management). Classical economics distinguishes the first three, some economists like Joseph Schumpeter mention enterprise, entrepreneurship, individual capital, management or leadership as a fourth factor. The payments for these factors are wage, rent, interest and profit.

The American Marketing Association (n.d.). *Factors of production*. Retrieved January 3, 2006, from <http://www.marketingpower.com/live/mg-dictionary-view3925.php?>

The Henry George School of Social Sciences (n.d.). *Factors of production*. Retrieved January 3, 2006, from <http://www.landandfreedom.org/econ/econ2.htm>

¹¹ Harkin, B. (2004). IP Commercialization. In Jolly, A., & Philpott, J. (Eds.), *A handbook of intellectual property management: Protecting, developing and exploiting your IP assets* (pp.73-77). London & Sterling, VA: Kogan Page.

¹² Godin, S. (2003). *Purple cow: Transform your business by being remarkable*. NY: (Penguin) Portfolio.

¹³ Kim, W. C., & Mauborgne, R. (2005). *Blue ocean strategy: How to create uncontested market space and make competition irrelevant*. Boston, Mass.: Harvard Business School Press.

Navio's AV Commerce products now support some of the largest music and entertainment companies in the world such as Atom Entertainment, FOX Sports Mobile, and Walt Disney Internet Group¹⁴.

1.3 Intellectual Property Concepts in Marketing

The value and quality of intellectual property should be examined by analyzing the results of the exercising of intellectual property rights. In other words, the action of "creating value" is achieved through the use of intellectual property combined with marketing strategies on a worldwide scale. Because the core concept of marketing is the exchange value with others, and the function of marketing is to solve the problems arising from such an exchange, it is vital that the role of intellectual property in marketing is sufficiently understood.

However, on the subject of marketing the role of intellectual property generally has not received much attention, even in the field's education system. Thus, surely no related theory is provided to determine whether the exercise of such application is right for a company's marketing strategy. Also, most marketers are not trained in intellectual property, consequently, they often do not consider any legal implications of their marketing decisions. Because of the lack of such trained talents in industry, the applications of intellectual property and relevant rights certainly are under-exploited and under-valued.

Godin (2003) indicates that "Ps of marketing"¹⁵ are just marketing mixes to help a marketer create a quick list to make sure that one has done the standard work, however there are no elements in there to make one product/service¹⁶ remarkable. As described above, finding a breakthrough is an important consideration for a company in this information-age-made hypercompetitive environment. "Creativity needs to be in the DNA of a company," said Barney Waters, vice president of marketing for PUMA North America¹⁷. Thus, innovative approaches to marketing are certainly needed in regards to intellectual property (IP) and intellectual property

¹⁴ Navio Systems Inc., a Cupertino California company is specializing in DRM technology and provides the rights-based commerce solutions. Retrieved May 25, 2006, from <http://www.navio.com>

¹⁵ The most common applied marketing mix is 4Ps that includes product, price, place, promotion. See

"McCarthy, J. E. (1960). *Basic Marketing: A Managerial Approach*. Homewood, Illinois: Richard D. Irwin, Inc." for original statement of "4Ps" concept.

¹⁶ The definition of "product" in marketing means the aggregate of providing satisfaction and benefits in all of or some combination of physical performance, psychological factors, service impression and symbolic meanings.

Product means goods which are in physical form and services.

Lin, Chien-Huang (2002). *Marketing management*. Taipei: Bestwise. [Text in Chinese]

¹⁷ Hanna, J. (2005, April 25). *Creativity—how can I get some?* Retrieved September 2, 2005, from <http://hbswk.hbs.edu/item.jhtml?id=4768&t=marketing>

system (IPS).

Even though the activity of IP commercialization has no common standard or operation rules, being aware of the question of how to utilize intellectual property in marketing strategies is critical.

After all, as a result of long-term deficient attention to intellectual property concepts in marketing, there is the shortage of research and textbooks for the education (formal and non-formal) on this subject.

1.4 The Position of the Digital Content Industry

Since the speed of information and communication has dramatically changed by the advances of the Internet, this has allowed individuals to draw upon resources without permission. This together with the opportunity to easily copy and imitate others made the appearance of Napster. Napster was originally a file-sharing website and became the first widely-used peer-to-peer (P2P) music sharing service, and it made a major impact on how people used the Internet. Although Napster's original service was shut down by court order¹⁸, yet it paved the way for decentralized P2P file-sharing programs such as Kazaa, Bearshare, BitTorrent, eDonkey and Foxy, which allow the Internet users to download video and music even more easily and such programs are much harder to be monitored. Consequently, the most influential technology in the 21st century—the Internet, has turned many businesses upside down, especially in the digital content industry since “content” is the origin of this industry. Therefore, the primary challenge for the digital content industry is not only to create and market a new winning-market product/service, but also to prevent similar products/services and outright copies¹⁹. As noted above if these providers want to get a fair return, applying an intellectual property system to business and the marketing strategy certainly is a necessary means.

In addition, over the years there has been more attention given to marketing “technology”. Although patents and trade secrets are the key intellectual property rights in high-tech industries, it is not quite the same for the digital content industry. As mentioned above, for this industry, copyright is more crucial because “content” is

¹⁸ 2001 US Dist. LEXIS 2186 (N.D. Cal.) (2001, March 5), aff'd, 284 F. 3d 1091 (9th Cir. 2002). After a failed appeal to the Ninth Circuit Court, an injunction was issued on March 5, 2001 ordering Napster to prevent the trading of copyrighted music on its network.

Rich Menta (1999, December 9). RIAA sues music startup Napster for \$20 Billion. *MP3 Newswire*. Retrieved October 29, 2005, from <http://www.mp3newswire.net/stories/napster.html>

Evan Hansen (2001, April 19). Flick portrays paranoid future for MP3s. *CNET News.com*. Retrieved October 29, 2005, from

http://news.com.com/Flick+portrays+paranoid+future+for+MP3s/2100-1023_3-256096.html

¹⁹ Rebecca Carroll (2005, October 19). Court stops “legal” file sharing site. *The Associated Press*. Retrieved October 29, 2005, from <http://www.bizreport.com/news/9414/>

the origin of the digital content industry. Currently, there are more research and discussions being focused on this subject.

“Financing” is the other major problem in this industry in most countries, except in the United State of America²⁰. In the tangible property world, before a bank decides a client’s financing conditions, it can check the status of this client’s property and credibility, and may appraise his/her collateral such as the house, the land or the negotiable securities. Mechanisms, include the credit appraisal rules, the value estimation, the work flow, public information, and the secondary transaction market (including auction) of collateral, which have been the historical long-term evaluation system managed by the bank and the loan world. These well-established systems are acknowledged by banks, enterprises and individuals. Also, these rules are already clear and standardized²¹. However, these mature mechanisms have not adjusted to the current world of intellectual property. Consequently, companies that are valued more in intangible property than book value, are difficult to get financed from the current financing system. Most companies in the digital content industry fall into such trouble. For example, Taiwanese e-cartoon character A-Kuei, received an award at a ceremony in Tokyo to honor 2003's 29 “Asian Heroes” selected by Time Asia magazine. At that time, A-Kuei was the only popular virtual figure on the honor list²². However, since then the company (Spring House Entertainment Inc.) still struggles to raise funds.

Some governments have co-worked with a nonprofit organization or set up a public sector to help in the development of the digital content industry, such as DCF (Digital Content Forum²³) in England, Digital Content Promotion Office in Taiwan. However, financing still has been troubling many digital content companies.

Therefore, a company in the digital content industry has to be self reliant. Under this circumstance, it is necessary for a digital content company to think over intellectual property which is the most valuable asset and should be the key to bring continuing profit.

²⁰ Hollywood movie industry has been successful for years, and the relevant financing systems in funding intellectual property are well developed.

See *Chinese Ref. 3*.

Caves, R. E. (2000). *Creative industries: Contracts between art and commerce*. Boston: Harvard University Press.

²¹ Berman, B. (Ed.). (2002). *From ideas to assets: Investing wisely in intellectual Property*. New York: Wiley, p.85.

²² Central News Agency (2003, June 13). Cartoon's creator hailed as a real-life Asian hero. *Taipei Times*. Retrieved October 29, 2005, from

<http://www.taipetimes.com/News/taiwan/archives/2003/06/13/2003055040>

²³ Digital Content Forum (DCF), a U.K. non-profit organization forms a two-way communication between industry and government to gather views and input into policy-making processes. Retrieved September 2, 2005, from <http://www.dcf.org.uk/about>

2. Research Questions and Objectives

As described above, the characteristics of the current marketing environment and digital content industry raise core questions and objectives for this research. The questions are:

1. What kind of preparations a digital content company has to make in order to implement strategic intellectual property management and be able to exercise intellectual property for creating profit?
2. How to determine the most effective application of intellectual property for marketing strategies in the digital content industry?

In essence, this research is aimed at readers who are interested in applying intellectual property in marketing strategies in the digital content industry, thus the purpose of this research is to provide and explain significant linkages between the most effective applications of intellectual property and successful marketing. These especially include the connection of total cost analysis, the product life cycle (PLC) and intellectual property rights (IPRs) as a set of helpful marketing tools to assist marketing and sales. As Ettenberg (2002)²⁴ points out, among all the tools available to keep our economy growing, “marketing” is the most important, potentially the most powerful—and currently the least effective.

However, before a digital content company is able to use intellectual property to create profit, restructuring is needed within the company itself. Therefore, this research provides an organizational infrastructure for a digital content company as the foundation of exercising powerful strategic intellectual property management for marketing strategies.

In brief, the purpose of this research is to:

1. **Provide an organizational infrastructure for a digital content company**
2. **Establish a model of planning intellectual property for marketing strategies.**

Additional goals of this research are described as below:

1. **Convince company executives that:**
 - (1) Marketers/sales representatives should have fundamental knowledge of intellectual property (IP) and intellectual property system (IPS), so they can apply such knowledge to the design of marketing strategies.
 - (2) Changing the organizational infrastructure of the company is critical for intellectual property to become profitable.
2. **Convince marketers/sales representatives that:**

²⁴ Ettenberg, E. (2002). *The next economy: Will you know where your customers are?* New York; London: McGraw-Hill.

It is a must to take the exercise of IP and IPS as a powerful differentiation tool.

3. Establish two notions:

- (1) Before the investment of resources, a company needs to design their strategies of marketing and intellectual property ahead of time.
- (2) Designing “marketing strategies” as a part of a company’s business model.

4. Provide an easy mechanism for marketers/sales representatives to determine the accuracy and the best practice of marketing strategies with the utilization of intellectual property and intellectual property system.

A company’s marketing system needs to include IP and IPS to achieve these general goals. First, IPRs can be used to suppress competition, because IPRs grant the exclusive rights to IP holders (owners). Besides trade secrets, the other rights such as patent, trademark and copyright are for a specified time, and these rights can be actively enforced against infringement through the courts. Second, a company can generate cash by utilizing IPRs rather than keep developing technology, such as licensing rights. Third, a company can use its own rights to put new technology on hold until they find the best way to use it. Finally, obtaining IPRs certainly let a company have the stronger bargaining power in business deals or in negotiating cross-licenses with potential competitors²⁵. On the other hand, there are various aspects of strategic IP management that need to be considered. At least a company should not only protect, use, and manage its own IP, but it also needs to choose which strategies to use and when and if it plans to “copy” weak property rights owned by others.

3. Research Flow

This research is based on the qualitative research methodology. The methods include data collection, organization and analysis to finally identify an easy-to-understand mechanism for applying intellectual property in marketing strategies in the digital content industry through the application structure of PLC, a total cost analysis structure (4C structure) and marketing strategies with IPRs. The research flow as in Figure 1.2 shows the main structure and process of this research.

²⁵ Glazier, S. C. (2000). *Patent strategies for business* (3rd ed.). Washington, D.C.: LBI Institute, pp. 2-3.

Figure 1.2

Research Flow

