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#ML15MayRathon

CROWDSOURCING: FUNDRAISING BEST PRACTICES AND IMPLICATIONS

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Crowdfunding vs Crowdsourcing

- Crowdfunding and crowdsourcing are closely related, but they are not the same thing
- Crowdsourcing is the act of obtaining anything from a group of people—whether it's labor, ideas, content, or anything else supplied to a business or institution
- Crowdfunding is a type of crowdsourcing
- In today's economy the term "crowdfunding" can take on many meanings but it is, by definition, the practice of funding a project or venture by raising small amounts of money from a large number of people, most commonly via the Internet

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Federal Regulations

JOBS Act:

- On March 27, 2012, Congress passed the Jumpstart Our Business Startups (JOBS) Act, a bipartisan effort in both the House and the Senate to ease the regulatory burdens on smaller companies and facilitate capital formation. President Obama signed the legislation into law on April 5, 2012
- Main Provisions:
 - Title I: Creates a transitional "on-ramp" for a new category of issuer, emerging growth companies (i.e. total annual gross revenues of < \$1 billion), easing registration requirements in order to encourage them to pursue IPOs
 - Title II: Allows for "crowdfunding" by (and public solicitation of) "accredited investors.
 - Title III: Allows for "crowdfunding" by (and public solicitation of) all investors (i.e. accredited and non-accredited)
 - Title IV (Regulation A+): Modifying the existing "Regulation A" to provide for, among other things, an expansion of the exemption to cover offerings of securities up to \$50 million (versus the previous \$5 million) in any 12-month period

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How Does Crowdfunding Actually Work?

- All Starts with the "Crowdfunding Portal":
 - "Crowdfunding Portal" just means the website through which the offering is being made
 - Portal is the go between the investors and the Issuer
 - Portal is responsible for documentation of the deal as well as the pass through of all informational materials to investor
- Differentiation:
 - Portals differentiate themselves by type of crowdfunding (e.g. debt, equity, reward, etc.) as well as niche focus
 - Most popular niche focuses today center around debt crowdfunding (e.g. "P2P Lending" such as LendingClub or Prosper) and Real Estate (debt and/or equity campaigns, e.g. RealtyMogul and Fundrise)

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Crowdfunding Statistics

- Global crowdfunding experienced accelerated growth in 2014, expanding by 167 percent to reach \$16.2 billion raised, up from \$6.1 billion in 2013.
- In 2015, the industry is set to more than double once again, on its way to raising \$34.4 billion.
- Business and entrepreneurship remained as the most popular crowdfunding category, collecting \$6.7 billion in 2014, which represents 41.3 percent of total crowdfunding volume. Social causes (\$3.06 billion), films and performing arts (\$1.97 billion), real estate (\$1.01 billion), and music and recording arts (\$736 million) rounded out the top five categories.

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OCULUS VR

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Press Release

Media Contact
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FOR IMMEDIATE RELEASE:

Former Gaiikai and Scaleform Officer, Brendan Iribe, Joins Oculus VR™ as CEO

Los Angeles – August 14, 2012 – On the heels of its highly successful Kickstarter launch, Oculus VR™, a developer of virtual reality (VR) technology, announced that the former Gaiikai chief product officer and Scaleform CEO, Brendan Iribe, has joined Oculus VR™ as CEO. Other key hires include Michael Antonov and Jack McCauley, who join Oculus as chief software architect and vice president of engineering, respectively.

“The success of our Kickstarter campaign has been overwhelming and a bit humbling, but now it’s time to deliver on the promise,” said Palmer Luckey, founder of Oculus. “We’ve done the R&D and have blown people away with our prototypes. These hires, all of whom have many years of experience developing technology for video games, will ensure that we first deliver rock-solid dev kits, then a consumer product that takes video games to a completely new level of immersion.”

In 2004, Brendan Iribe and Michael Antonov co-founded Scaleform, a developer of UI middleware for video games. Scaleform was eventually acquired by Autodesk in March of 2011, but not before seeing its award-winning software development kit (SDK) included in over 1000 high end video games. After overseeing the transition to Autodesk, Brendan moved on to Gaiikai as the chief product officer leading the user experience and product development teams. He now lends his deep industry experience and knowledge of gaming technology to Oculus VR™ and its product, the Oculus Rift.

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Press Release

Media Contact
Eric Schumacher
Jim Redner
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FOR IMMEDIATE RELEASE:

Oculus VR Closes \$16M Series A to Bring Consumer Virtual Reality Platform to Market

Spark Capital and Matrix Partners Lead Round to Fuel Oculus VR's Next Phase of Growth

IRVINE, CALIFORNIA (June 19, 2013) – [Oculus VR, Inc.](#), developer of the highly anticipated Oculus Rift, today announced that it has closed \$16 million in Series A funding. The round was co-led by Spark Capital and Matrix Partners. Santo Politi, founder and general partner at Spark, and Antonio Rodriguez, serial entrepreneur and general partner at Matrix, have joined the company's board of directors. Founders Fund as well as Formation 8 also participated in the round. The funds will be used to accelerate the development of virtual reality hardware, software and services, ultimately creating a full virtual reality platform for consumers.

“Oculus began with a single mission: to put players inside the game,” said Palmer Luckey, founder of Oculus VR and inventor of the Oculus Rift. “This investment allows us to deliver immersive and affordable virtual reality to players everywhere.”

The Oculus Rift is a virtual reality headset that provides an immersive, stereoscopic 3D experience with a huge field of view—110 degrees diagonally—and that overcomes latency challenges. A prototype of the Oculus Rift first appeared at E3 2012, immediately earning praise from the industry. Just one year later, Oculus has manufactured and successfully shipped the Rift development kits purchased in its Kickstarter campaign, allowing game developers across the globe to create Oculus-ready applications and interactive content.

“With the recent console announcements and the advent of stronger mobile technology, we’re watching the video game industry keenly,” said Mr. Politi. “In our estimation, Oculus is one of the only companies in the space with something completely new and disruptive. They have the right team, capital and vision to take virtual reality beyond console gaming and into everyday computing.”

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Oculus Raises \$75 Million for the VR Goggles of the Future

BY PETER RUBIN 12.12.13 | 10:00 PM | PERMALINK

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THE WALL STREET JOURNAL

WEDNESDAY, MARCH 16, 2014 • VOL. CXLXIII NO. 70

MARKET INDEXES: DOW JONES 14,312.18 | NASDAQ 4,232.17 | S&P 500 1,823.13 | NYSE TICKETS 213.57 | 10-YR TREAS. 1.72% | RUSSELL 2,000 1,974.13 | EURO 1.1241 | GOLD 1,161.60 | OIL 99.15 | RICE 10.26

What's News

Facebook made another investment deal, agreeing to acquire virtual-reality startup Oculus VR for \$2 billion in cash and stock.

ECB officials said during a meeting that they are willing to consider dramatic steps to guard against dangerous low inflation in the euro zone.

Over 2.2 million U.S. employees quit to join California's growing startup ecosystem since last year, according to a new survey.

The SEC is preparing to announce a new rule that would require public companies to disclose more information about their lobbying efforts.

Netflix is to open a new streaming service in Japan, but it must first overcome a series of regulatory hurdles.

U.S. officials are looking for a way to deal with the growing number of people who are fleeing their home countries.

A former Deutsche Bank executive has been accused of leaking information about the bank's plans to sell its U.S. operations.

The IRS will issue new rules for the private inurement test, which is used to determine if a nonprofit organization is operating for the private inurement of any individual.

Worldwide

Obama continued his efforts to improve the economy and create jobs.

RECOVERY HOPE A search-and-rescue worker creeps through mud and debris in the aftermath of the massive mudslide near Oso, Wash. The slide took the lives of at least 10 people, but some believe they may have located eight more bodies, possibly bringing the count to 24. AP

Facebook's Shopping Spree Nets Virtual-Reality Startup

Facebook Inc. made its most significant deal of the year, agreeing Tuesday to acquire virtual-reality startup Oculus VR for \$2 billion in cash and stock.

The deal also allows the company to acquire Oculus VR's virtual-reality goggles, the Oculus Rift, for \$1 billion in cash and stock.

Oculus VR's Rift goggles feature a 1080p resolution and a 90-degree field of view, which is a significant improvement over other virtual-reality goggles on the market.

Facebook CEO Mark Zuckerberg said the acquisition is a key part of the company's strategy to build a more immersive and social virtual world.

The deal also allows Oculus VR to continue its development of the Rift goggles, which are expected to be released in the second half of 2014.

Oculus VR CEO Brendan Iribe said the deal is a "game-changer" for the virtual-reality industry and will help bring virtual reality to a much wider audience.

ECB Set To Mull Heavier Stimulus

European Central Bank officials said Tuesday they are considering more aggressive steps to guard against dangerous low inflation in the euro zone.

The ECB's president, Mario Draghi, said during a meeting that the bank is "open to all options" to achieve its target of 2% inflation.

Draghi also said that the ECB is "not ruling out" the possibility of a "helicopter money" operation, which would involve printing money and distributing it to the public.

The ECB's decision comes as the euro zone continues to struggle with low inflation and high unemployment.

Draghi said that the ECB is "committed" to its mandate and will do whatever it takes to achieve its target.

Facebook's Buying Spree Continues

Facebook Inc. continued its aggressive buying spree Tuesday, announcing the acquisition of virtual-reality startup Oculus VR for \$2 billion in cash and stock.

The deal is part of Facebook's strategy to build a more immersive and social virtual world.

Facebook CEO Mark Zuckerberg said the acquisition is a key part of the company's strategy to build a more immersive and social virtual world.

The deal also allows Oculus VR to continue its development of the Rift goggles, which are expected to be released in the second half of 2014.

Oculus VR CEO Brendan Iribe said the deal is a "game-changer" for the virtual-reality industry and will help bring virtual reality to a much wider audience.

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KICKSTARTER

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Kickstarter

- **Kickstarter** is a Funding Platform for Creative Projects
 - Since April 28, 2009, over \$1.5 billion has been pledged by more than 8 million people to fund more than 80,000 creative projects
- A **Project** is a finite work with a clear goal
- A **Funding Goal** is set by the creator as the amount of money that a creator needs to complete his or her project
 - Funding is all or nothing
 - No one is charged for a pledge toward a project unless the project reaches its funding goal
- A **Creator** is the person or team behind the Project
- **Backers** are those people who pledge money to Creators for the project
- **Rewards** are project-related incentives that the Creator agrees to provide Backers, such as limited editions or copies of the creative work.

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Kickstarter

- Project Creators set Funding Goals and Deadlines
 - If people like the project, they can pledge money and become Backers to make it happen
 - Terms are governed by the Kickstarter Agreement
- Kickstarter fees to Creators are 5% of funds collected plus a payment processing fee (3 – 5%)
 - No fee if the Funding Goal is not met
- Creators represent that the content provided to Kickstarter and the Project does not infringe third party IP
- Project Performance
 - Responsibility of the Creator
 - Rewards need to be fulfilled
 - Potential legal ramifications if funds not appropriately spent
 - Performance required by Agreement between Creators and Backers

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Kickstarter Agreement

- Creator must complete the project and fulfill each reward
 - If not, obligations to communicate, act reasonably, refund, etc.
- Intellectual Property
 - Creator represents to Kickstarter that content and websites linked into the project page do not infringe third party IP
 - Kickstarter gets a license to the IP in the content submitted
 - Follows DMCA, will take down content that infringes
- Indemnification – Very broad in favor of Kickstarter
 - “If you do something that gets us sued, or break any of the promises you make in this agreement, you agree to defend, indemnify and hold us harmless from all liabilities, claims, and expenses (including reasonable attorney’s fees and other legal costs)...”
 - “We reserve the right to assume the exclusive defense and control of any matter otherwise subject to this indemnification clause...”

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Kickstarter Agreement

- Warranty Disclaimer to Backer
 - Standard language here, essentially “as is”
 - Liability disclaimed to the maximum extent permitted
- Delivery
 - Shipping may or may not be included
 - Further information may be required from backers
 - Consider carving out certain litigious jurisdictions, such as EDTX
- Disputes
 - Creator and backer agree to first try to resolve the dispute
 - Arbitration or small claims court are sole remedies
 - Class action waiver

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FORM LABS

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FORMLABS FORM 1 on Kickstarter

- [FORM 1: An affordable, professional 3D printer](#)



- **2,068 backers** pledged \$2,945,885 to help bring this project to life.

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FORMLABS FORM 1 on KICKSTARTER

• 3D Systems Sues FormLabs and Kickstarter for Patent Infringement

- 3D SYSTEMS HAS announced it is bringing suit in Federal District Court against Formlabs and Kickstarter, seeking injunctive relief and damages for alleged infringement of a patent relating to how the startup's light-based printer operates.
- 3D Systems alleged that Formlabs is in violations of claims 1 and 23 of United States Patent No. 5,597,520 "Simultaneous multiple layer curing in stereolithography."



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FORMLABS FORM 1 on KICKSTARTER

- Does the Kickstarter campaign count as a sale or offer for sale?
- Can that amount to an act of patent infringement?
 - Method patent claims – No, a sale of device does not create infringement of a method claim
 - Device type claims – different story
- Jurisdiction
 - Where can the Creator company be sued?
 - Where does it resides?
 - What if it doesn't ship to certain jurisdictions?

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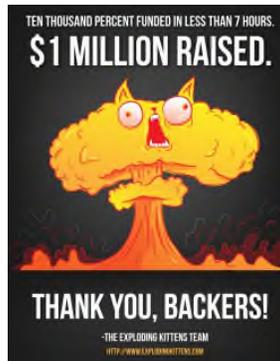
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EXPLODING KITTENS

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Exploding Kittens – Cutting Edge Insanity

- Exceeded Kickstarter crowdfunding goal in eight minutes (seeking \$10K)
- After 30 days, the project has become the most backed campaign ever on Kickstarter with 219,382 people pledging more than \$8.7 million
- Launched 1/20. By the morning of 1/21, all over main stream media.



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Exploding Kittens – Cutting Edge Insanity

• The Most-Backed Kickstarter Projects of All Time

1. [Exploding Kittens](#) - 219,382 backers
2. [Bring Reading Rainbow Back for Every Child, Everywhere!](#) - 105,857
3. [The Veronica Mars Movie Project](#) - 91,585 backers
4. [Double Fine Adventure](#) - 87,142 backers
5. [Torment: Tides of Numenera](#) - 74,405 backers
6. [Project Eternity](#) - 73,986 backers
7. [Pebble: E-Paper Watch for iPhone and Android](#) - 68,929 backers
8. [Mighty No. 9](#) - 67,226 backers
9. [OUYA: A New Kind of Video Game Console](#) - 63,416 backers
10. [COOLEST COOLER: 21st Century Cooler that's Actually Cooler](#) - 62,642 backers

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IP Best Practices

- Copyright in the Project Content on Kickstarter
 - The Artwork used in a Kickstarter project may be valuable and is protected by US and international copyright regimes
 - Music, film and other creative works placed on the project website are also protected by copyright
- There is no need to register a copyright in the US for federal copyright protection to attach
- However registration has a host of advantages...
 - A presumption of copyright ownership to the registrant
 - Statutory damages are available for infringement of the copyright
 - Attorneys fees are available if the copyright holder prevails
- However, if a third party begins a course of infringement prior to registration of the copyright, then enhanced the protections are not available for that act of infringement.

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IP Best Practices

- Trademark rights in the Project Content
 - Trademark rights in Project Content can also become very valuable, very quickly with a successful Kickstarter or similar campaign
 - However, if the Creator does not file for trademark rights prior to the Kickstarter campaign, a third party can cause problems by trying to steal the mark – so to speak – by racing to the trademark office to file first
- Filing an Intent to Use Trademark Application
 - Filing a trademark application on marks embodied in the Project content before the campaign starts is a good way to protect marks that may become valuable
- The Kickstarter campaign is enough to establish a bonafide intent to use the mark in commerce
- Also, consider obtaining any necessary domain names prior to the campaign

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IP Best Practices

- Patentable concepts in the Project Content on Kickstarter
 - A Project may rely on a patentable concept that is embodied in the Project content
 - Patents can be valuable and disclosure of the idea (an enabling disclosure) to the public prior to filing for a patent can cause problems
- Patents outside of the United States
 - For the most part, most other countries have an absolute novelty standard
 - A public disclosure of the invention thereafter prohibits a patent filing
 - If international patent rights are important, consider filing for a patent
- US Patents
 - Grace period between public disclosure and the filing of a patent.
 - The US is on a first-to-file system now, rather than first to invent
 - Filing a provisional patent application before the campaign can protect US and international patent rights

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Panelists



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Andrew J. Gray IV concentrates his practice on intellectual property (IP) litigation and prosecution and on strategic IP counseling. Andrew advises both established companies and start-ups on computer and Internet law issues, financing and transactional matters that involve technology firms, and the sale and licensing of technology. He represents clients in patent, trademark, copyright, and trade secret cases before state and federal trial and appellate courts throughout the United States, and before the US International Trade Commission.



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Andy Ray represents public and private companies, financial sponsors, and management teams in a broad range of corporate and finance matters. Additionally, he counsels extensively in the telecommunications, media, and technology (TMT); government contracts; energy; and financial services sectors. Various industry publications recognize Andy as a leader in both M&A and in communications. He recently led the team representing Oculus VR in its \$2 billion sale to Facebook, which was named the M&A Advisor M&A Deal of the Year.

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Panelists



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Rob Bertin has more than 15 years of experience litigating patent, trademark, trade secret and copyright cases throughout the United States, counseling clients on Intellectual Property ("IP") and negotiating transactions involving IP. He has represented clients at the center of some of the largest patent portfolio sale and licensing events in the high tech industry, including the Nortel and Kodak transactions. Rob leverages a technical background to represent large and small companies primarily in high technology industries.

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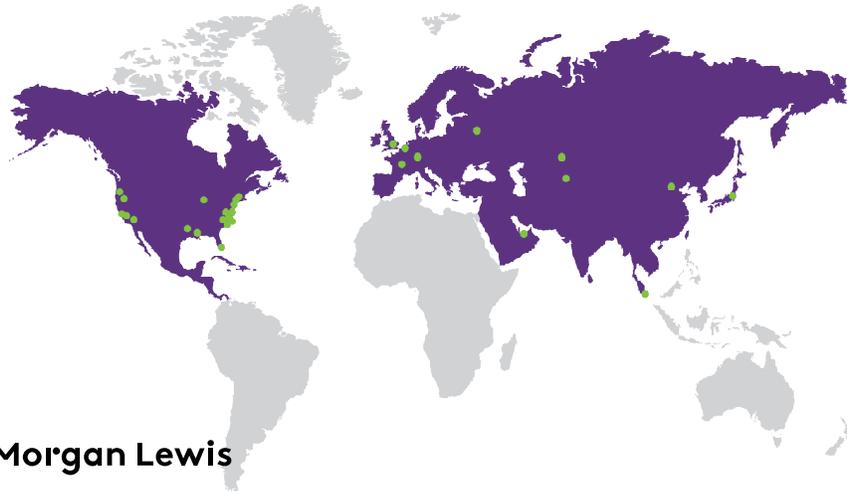
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