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The Magic of Marketing

- This chapter explains that the real meaning of marketing is not about advertising and selling but choosing the right customers in the first place, then being prepared to put them at the centre and build your business around their requirements, listen to them and respond to their changing needs.



‘Marketing’ isn’t just a posh word for ‘selling’. It’s much more radical than that. Marketing in its widest and best sense is about aligning your whole business to the changing needs of your customers.



successful
creative
enterprises
are
truly
customer
focused



The Marketing Problem

Oscar Wilde wrote: “The play was a great success but the audience was a total failure.” Some people tell me their business is fine – the problem is the customers! Usually a lack of them. The ‘marketing problem’ they claim to have is that they cannot convince people to buy their things. Their real problem is that their business is built around themselves and their products or services, not around customers’ needs. They do their thing in a customer-free zone, a kind of creative vacuum. They are product-focused, not customer-focused. Then they hope that some marketing magic will sell it. It’s as if they believe marketing is a kind of magic dust that clever marketers can sprinkle onto any old product or service to make it sell like hot cakes to anyone.

Successful creative enterprises are truly customer-focused, not in the sense of putting customers in their sights (as if firing products at them), but putting the customer at the centre of their universe so that their entire business revolves around them. It’s a fundamentally different philosophy.

It’s a shift of thinking, from **How can we sell what we want to create?** to **How can we use our creativity to provide what customers want to buy?**

The word ‘marketing’ encompasses both science and art as well as a wide range of skills, but essentially it can be separated into strategic marketing and operational marketing.

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Strategic and Operational Marketing

Operational marketing is the more visible side: advertising, PR and selling that is about communicating towards customers, telling them about products and services. Strategic marketing concerns itself with deciding what products and services to produce in the first place, based on customers' changing needs. It is responsible for aligning the whole organisation around the needs of particular customers. It's crucial that strategic marketing comes first because unless your initial business formula is right – matching particular products and services with selected customers profitably – then operational marketing will fail, no matter how clever (or creative) the advertising.

The strategic marketing formula includes decisions about which customers to serve. This is not a matter of opportunism but at the heart of your business formula and route to success.

Customer Focus



Selecting the right customers

Selecting the right customers in the first place is an essential element of any successful business formula. Then organising your enterprise around the changing needs of these selected clients or market segments is what marketing really means. In other words, putting customers first – at the beginning of the business process, not at the end. **Customers' needs have to be the whole point of the business from beginning to end.** That's why David Packard co-founder of Hewlett Packard famously said: "Marketing is too important to be left just to the marketing department." Marketing is the responsibility of the whole business, not just the sales people at the end of the line.

The most strategically focused businesses have a list of target clients that they have identified as fitting in with their business strategy. David Ogilvy, founder of advertising agency Ogilvy and Mather wrote in his book *Confessions of an Advertising Man* how he built up his business by targeting clients and focused on getting their accounts at all costs. Ogilvy and Mather's client list over 50 years includes names such as American Express, Ford, Shell, Barbie, Kodak, IBM, Dove and Maxwell

Ideas in Action

— see pages 14, 24 & 94

House. For examples of other creative businesses that have targeted specific customers see **Sharon Mutch, Peppered Sprout** and the **Mando Group**.

Marketing is definitely not a matter of trying to ‘please all the customers all the time’, but selecting the customers you can partner with most effectively and profitably, matching their needs with your creative skills. Just as business strategy includes deciding what not to do, strategic marketing includes deciding which customers not to deal with. Not all customers are good customers. Trying to focus on every possible customer is not being focused at all!

Segmenting the Market



Market Segmentation

Market Segmentation is the process of dividing potential customers into groups with similar characteristics – perhaps geography, gender, age, needs, industry, or whatever is most useful or relevant. Analysing customer segments allows clear decisions to be made about prioritising target segments and deciding which types of customers to avoid because they do not fit the specification of your business formula. It can also help with operational marketing as each segment’s similar characteristics can help to identify the most effective media channels to use to approach each group. One particularly useful way of segmenting customers is based on the media they read and watch, since this also automatically indicates which advertising media to use.

Existing customers are a useful resource, because analysing their characteristics can help you understand which market segments you can work with best. Despite the strategic approach advocated here, your customer base may have developed more by accident than by design. And your current customers may help you to understand your business strengths and weaknesses – if you ask them. **See Chapter 2: Know Yourself.**

Furthermore, it's easier and cheaper (up to five times as much, it is said) to win more business from existing clients compared to winning new customers. Take care of them!

In addition, existing customers can be the route to new clients. Word of mouth is the best advertising (and the cheapest) so encourage it to happen if it leads to the right kind of customer.

Listening to Customers

So if customers are the whole point of the business, from beginning to end, it's clearly not enough simply to talk at them at the end, but to listen to them from the beginning. Marketing is a dialogue, not a monologue. **Listening to customers** has many dimensions but it is primarily an attitude towards customers as active partners, not passive targets. This involves looking at things from the customers' point of view.

Marketing can be described as 'being close to the customer' and it includes **market research** but not only the stereotypical market research (which makes me think of avoiding eye contact with people carrying clipboards in the high street and those annoying unwanted phone calls when I'm watching TV). There are many ways of listening to customers and looking at things from the customers' point of view if you want to. If you really want to know about markets and customers, you can find out through various means, indirect and direct. As well as direct (primary) research, market research also includes secondary (desk) research using published data from industry analyses, government statistics and trade journals, much of which is available in libraries or on the Internet. See [Sharon Mutch](#).

More directly you can visit customers, invite them to focus groups, and watch them use your product (or a competitor's). Visit them to see how they work. Get customers involved in new product development as [New Mind](#) do. Explore how you can help their businesses develop. Last but not least, listen to them and establish a dialogue through feedback mechanisms, focus groups, suggestions boxes, or over a lunch. Buy them a drink and **get** to know them. In return you'll **get** their good ideas and loyalty.



Listening to customers

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look
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things
from
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customers'
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Sometimes insights emerge about what customers are really buying, which may not be what you think you are selling them. For example the apocryphal tales of the beer that was bought only because the empty can made an excellent oil lamp in Africa; the bookstore that found nobody returned the voucher placed deep inside the Booker Prize-winning novel because in reality people bought it to leave on their coffee table to impress their friends. Such unsettling observations help you to see things from the customer's point of view.

Ask yourself: What do you know about your current customers, lost customers and target customers? **What would you ideally like to know?** Devise a way of finding out.

Operational Marketing

If you get your strategic marketing right, then operational marketing becomes much easier. In other words, if you have devised a business formula around a natural fit between selected customers and the products they want, at the right price, then advertising and promotion becomes more a matter of informing them rather than coercing them. There's no need for cold calling or hard selling if you've listened to customers all along and they've been included in the project from the start. On the other hand, even the most persuasive (or 'creative') advertising will not sell a product if it's not what the customers want and at the right price.



Four Ps of Marketing

- Product
- Price
- Promotion
- Place

The Marketing Mix is a blend of the **Four Ps of Marketing**: Product, Price, Promotion and Place. (Place really means Distribution but '3 Ps and a D' doesn't have the same ring to it.) These four controllable elements can be blended in different ways to maximise sales – so long as the product is right for the carefully selected target market.

Promotion is actually just one aspect of the marketing mix but it's what people often mean when they use the term 'marketing' as shorthand for advertising, public relations (PR) or other channels of marketing communications including direct mail and attending trade shows. All of these are essentially about getting the right message to the right people in the most effective way, emphasising **benefits not features**.

Benefits not features
see page 47

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Viral Marketing

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Operational marketing is always limited by budgets and that budget can be very small indeed, especially for new creative businesses. Sometimes, however, the cheapest is the best – word of mouth recommendations for example – so encourage this to happen and reward it when it does. **Mando Group** gives a percentage commission for recommendations that lead to new work. **Viral Marketing**, used extremely effectively by Hotmail to advertise itself at the bottom of messages as emails zoom around the Internet is also used by **Online Originals** as their e-books are sent between friends sharing works of literature.

By adopting an attitude to customers as partners rather than passive targets, interactive forms of marketing come to mind. For example websites that people can engage with (not just read) and printed materials that invite a response all treat customers as active participants.

Rather than thinking of expensive and relatively untargeted mass marketing (which in any case would be inappropriate for most creative businesses) turn this approach on its head and decide which single customer would be perfect if you could only have one. Then track down this ideal customer, then find one more, then another and so on.

In conclusion, marketing is not a magic dust that can make anything sell. The magic of marketing works when you put customers at the centre and build your enterprise around their needs.



Key Points

- 1** Marketing is not just a posh word for selling. It's much more radical than that.
- 2** Sort out your strategic marketing (part of your business formula) before planning your operational marketing.
- 3** Target specific market segments or specific customers. Draw up a target list of clients to win.
- 4** Marketing is a dialogue, not a monologue. It includes listening to customers as well as talking to them.
- 5** Not all customers are good customers. Decide which are good and bad for your enterprise.
- 6** Are you truly customer-focused or still product-focused?
- 7** Build your business around customers' changing needs. Be prepared to change as customers' needs do.
- 8** How much do you know about your current customers, lost customers and target customers? What would you like to know? Devise a way of finding out what you need to know, through various means including direct and indirect market research.
- 9** Help and encourage existing customers to recommend you to new customers – so long as they are the right kind.
- 10** Define the ideal customer then find one. Then another one, and so on.



Ideas in Action

New Mind Internet

Internet, Marketing and Technology

“Identify a market segment and make it your own” is Richard Veal’s advice to other creative entrepreneurs and that’s what New Mind has done with its specialist software for the tourism sector. “A world class product in a niche market”, Richard also describes it as “a piece of software that works for clients”. One of the reasons it works so well is that customers are involved in its development and new versions of the software are released every three months to keep pace with clients’ evolving needs.

New Mind listens to its customers and concentrates its creativity and skills on delivering solutions that deliver results.

In contrast to the company’s *lomis*[®] product, which is aimed at a more general market, its tourism software has no generic brand but is a ‘white label’ product, enabling clients to badge it with their own brand. So for example it is known by the Lancashire Tourist Authority as ‘LOIS’, the Lancashire Online Information System and by The Mersey Partnership as ‘MERVIN’ the Merseyside Visitor Information Network.

Founded in 1999 by Richard and business partner Andy Abram, the New Mind Group has 30 employees and a turnover in excess of £2m. Its rapid growth of 1000% in 5 years earned the business the prestigious ‘Inner City 100’ award for fastest growing business in the North West. New Mind’s technology and websites have also won awards for several of its clients, the portfolio of which includes Bath Tourism and The Beatles Story, plus many others.

The New Mind Group is incorporated as three separate companies: New Mind Technology Ltd, New Mind Internet Consultancy Ltd and New Mind Marketing Ltd. This is partly to provide separate branding for their range of work and also to distribute business risk. New Mind Internet Consultancy employs the Group’s 30 members of staff and most of the Group’s business is conducted through this company. Quite deliberately, the Group’s intellectual property belongs to New Mind Technology Ltd, which would allow the Group to sell its intellectual property at a later date through the sale of this company, with the benefits of it having no employees and providing a tax-efficient means of selling its valuable intangible assets.

www.newmind.co.uk

Richard (left) and Andy, New Mind Internet



Links to related ideas and topics in book:

- * **Exploitation of Intellectual Property** (see pg 58)
- * **Company Structures** (see pg 75)
- * **Customer involvement in the development of products** (see pg 38)
- * **Customers' changing needs** (see pg 36)

5

Dealing with Competition

- In this chapter we look at Ideas about how to deal with competitors and position yourself amongst them to create a competitive advantage.
- We also look at the larger forces of competition, including new entrants and substitute products as well as your immediate rivals.
- Finally the idea of co-operating with the competition – ‘co-opetition’.



As well as focusing on customers' changing needs, the most successful creative businesses recognise they are working in a competitive environment and devise a competitive strategy. Other businesses are in the market for the same customers too! Some enterprises will compete on price whilst others specialise to serve a niche market, becoming the best in that niche and charging premium prices to match.

Competitive Advantage

One of the questions to answer is: What can we do better than our competitors? Ironically this might not be what you are best at! **Competitive Advantage** is found in that area where you beat your competitors hands-down – even if it's not your best skill, or the thing you enjoy the most.

The analogy I use here is about my fell running. I run faster downhill than uphill (obviously) but so does everyone else! Running uphill is slower and more painful – but it is for my competitors too. In the uphill stage I finish nearer the front of the pack but I'm slower than average running down. So maybe I should compete in Italy where fell races finish at the top, because there my combination of strengths and weaknesses would give me a competitive advantage.

Thinking about competitive advantage in this way and focusing on customers' needs at the same time, the question becomes: **Which customers' problems can we solve better than anyone else?**

Business strategy – your route to success – involves deciding what specifically to do, and with which customers. It also involves deciding what **not** to do, including deciding which market segments not to compete in because the competition is too strong, concentrating instead on areas where you have competitive advantage. **Selecting the right customers** needs to be done in the context of competitors.



Competitive Advantage

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Selecting the right customers

see page 36



Competitive Positioning

You and Your Rivals

Competitive Positioning is the technique of analysing where you currently fit in amongst competing businesses, deciding where you should be and identifying your own 'high ground' on the competitive battlefield.

What is your customers' perception of your business in relation to your rivals?

You and your competitors can be plotted on graphs with various axes, such as price, service level, speed etc. A technique known as **charting the competition**¹³ allocates scores against, say, ten key criteria for each of your competitors as well as yourself. This helps to establish where you can position yourself and where you need to improve.

Customers' perspectives are paramount here and it's vital to look at your business – and the others – from the customers' point of view. Customers will label you or your rivals as 'cheap and cheerful', 'most expensive but worth the money', being 'easy to deal with', having the 'fastest turnaround' or whatever they define as 'quality'.

Quality

Everyone is in favour of quality – but what exactly does it mean? More to the point, whose definition of quality is more important – yours or the customer's? The National Library for the Blind (NLB), publisher of books in Braille format, prides itself on the high quality of its flawless Braille. It's a skilled process that can take months. By listening to its readers, NLB found that some customers preferred to read unchecked Braille proofs, available just days after the publication of the printed original, rather than wait several weeks for the perfect item. For them, speed was a quality issue. Now the NLB lets its readers choose which type of quality they want.

Quality is not a fixed thing. In business terms quality is a harmony between customers' needs and what's provided.



Charting the competition



Forces of Competition

Forces of Competition

The most obvious competition comes from the other guys who do the same thing as you, but these are merely your rivals, according to Professor Michael Porter¹⁴ of Harvard Business School. There are four other **Forces of Competition** to take into account. These are New Entrants, Substitute Products and Services, the Bargaining Power of Suppliers and the Bargaining Power of Customers.

The question to ask in relation to new entrants is: What's to stop someone else setting up in business and competing directly with us? The 'barriers to entry' may be flimsy, unless your enterprise is founded on copyright-protected technology or designs, needs special licences or requires massive capital investment. How can you move into a position where others cannot easily follow?

An even more potentially devastating competitive force is the substitute product. Remember what affordable word processors did to the typewriter industry! Who goes to New York by ocean liner in the age of the plane? Again, looking at it from the customer's point of view, what they want is not a typewriter or word processor but the ability to produce a professional document; not a berth in a ship or a seat on a plane, but to arrive safely and quickly in New York.

In terms of potential substitute products, the question here is: What is the benefit that the customer *gets from* existing products and services? A real understanding of customers' needs make you more likely to invent the substitute product or service yourself – rather than become the victim of it.

Entrepreneurs focus on customer **benefits not features** of the equipment or service that provides it. The customer wants to know "What's in it for me?". If the customer's response is "So what?", then you've been talking features, not benefits.



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Benefits not features

Co-opetition

Sometimes competitors can also co-operate as partners in projects or joint ventures. **Co-opetition**¹⁵ is the result of bringing together competition and co-operation to form not just a new word but also a new partnership.

A co-opetition partnership is more likely when your competitive positioning is different in some way, ie your specialities and strengths are not exactly the same.

Co-opetition is founded on the concept that businesses do not have to fail for others to succeed. They can co-operate to enlarge the pie then compete to carve it up, each getting more than they had before. Think of London's Charing Cross Road where booksellers compete alongside each other but at the same time combine to attract more customers to their world-class street of bookshops. Motor racing's Formula 1 industry is centred on a cluster of small specialist firms in the south of England. Similarly, 'creative clusters' in Liverpool, London, Helsinki, Huddersfield, Tokyo, Dublin, St Petersburg and Los Angeles attract customers by bringing together a concentration of related businesses which both compete and collaborate with each other.

In a nutshell, competitive advantage is the result of selecting the customers and markets where you will be a winner. Astute choices arise from understanding your strengths and weaknesses in relation to other enterprises so that you can choose wisely whether to avoid, compete (or co-operate) with them. The winners will be the businesses who provide the quality that profitable customers want, better than anyone else.

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Key Points

- 1** Assess the strengths and weaknesses of your rivals in relation to target customers. Decide which competition you can beat – and which you cannot.
- 2** Anticipate competitive threats from substitute products – invent them before someone else does.
- 3** Understand the customers' needs that the current product or service satisfies.
Engage in a dialogue with customers.
- 4** What's to stop other people setting up in business in competition against you? How can you move to a place where they cannot follow?
- 5** Chart the competition. Where do you sit amongst your rivals? Where else could you position yourself?
- 6** Ask: Which customers' needs can we serve better than anyone else?
- 7** What are customers' perceptions of your business in relation to your rivals?
- 8** If the customers' response is "So what?" then you've been talking features not benefits.
- 9** Are there circumstances in which you could collaborate with competitors? Think about Co-opetition.
- 10** Are you part of a creative cluster? Could you be?

Ideas in Action

ESP Multimedia

CD/DVD Authoring and Video/Audio Post-Production

ESP Multimedia Ltd is a new media development company, specialising in CD ROM and DVD authoring, and video/audio post-production work, owned by David Hughes and David Harry. Its impressive client list includes Warner Bros, BBC, Sky, Toyota, Smirnoff and Film Four.

Before setting up ESP, Dave Hughes co-composed the soundtrack for the film *Lock, Stock and Two Smoking Barrels* and soon afterwards found himself in Los Angeles working on films such as *The Bachelor* starring Renée Zellweger. Such high-profile projects are not always the most lucrative, says Dave. More 'commercial' projects, such as building Sky TV's music library are more profitable long term – and they are not always less creative, insists Dave.

David Harry was a member of 90s' chart dance act 'Oceanic' before turning his talents to multimedia as a developer and consultant.

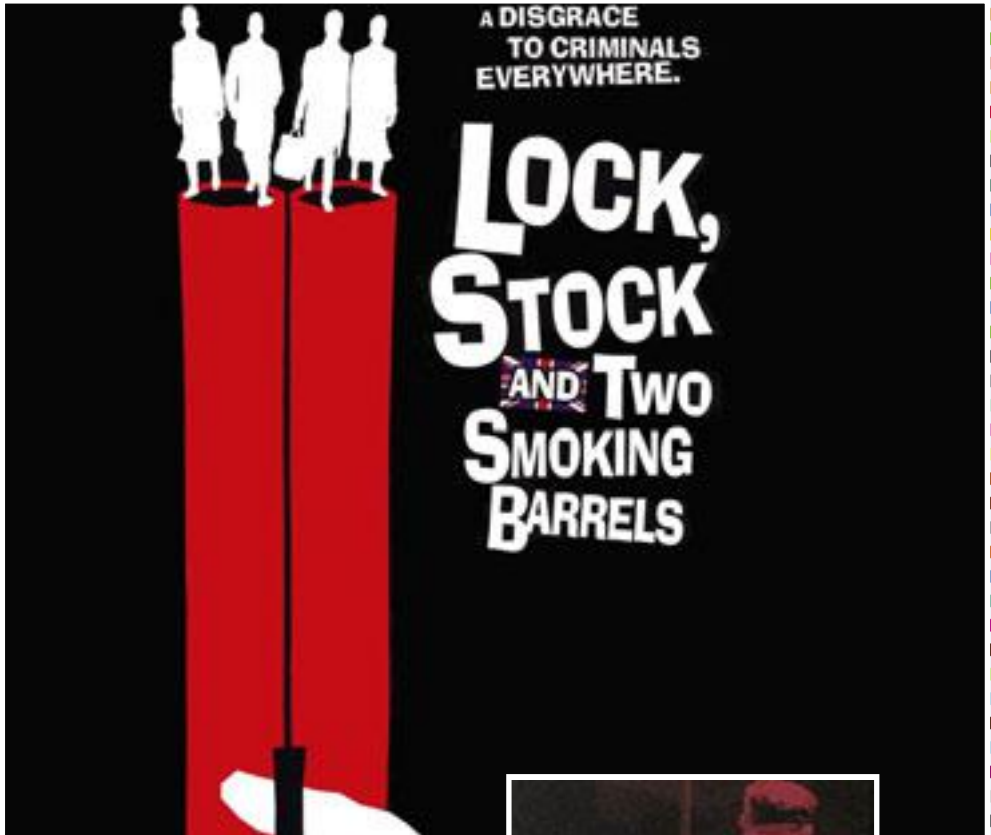
ESP's business formula combines the highly creative projects with what Dave calls the "bread and butter" activities, ie smaller jobs which keep the money coming in between the major projects, for example authoring and duplicating DVDs and CDs.

ESP's CD duplicating business, originally a partnership, has now been brought inside the limited company, in order to reduce business risks for the owners. 'CDDuplicator.co.uk' is still a separate brand and now acts as what Dave calls a "front door" for clients, to introduce them into ESP's sophisticated range of technical specialisms and professional media services.

Another income stream is derived from royalties on copyrights. For the BBC TV series *Funland*, Dave Hughes has negotiated retaining his publishing rights in some DVD releases and any other sales of the programme following the broadcast of the series in the UK.

Despite their high-profile projects and extensive client list, Dave maintains that their creative enterprise is ultimately about quality of life – in other words, a 'lifestyle business'.

www.espmultimedia.com
www.cdduplicator.co.uk



David Hughes at work

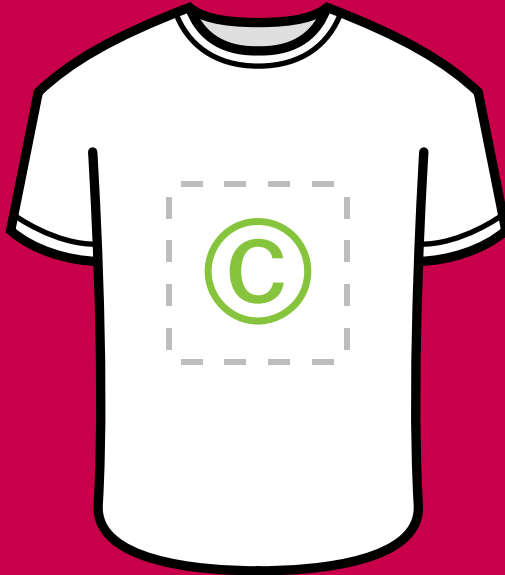
Links to related ideas and topics in book:

- * **Partnership and Company structures** (see pg 75)
- * **'Commercial' and 'Creative' not necessarily a conflict** (see pg 8)
- * **Retention of copyright to create income streams** (see pg 58)
- * **Brands** (see pg 53)
- * **Lifestyle Business** (see pg 9)

6

Protecting your Creativity

- This chapter comments on the growing importance of intangible assets in the Age of Information.
- It talks about the importance of Intellectual Property and how to protect your ideas through copyright, design rights, trademarks and patents.
- Crucially, it discusses how to use intellectual property rights to turn your bright ideas into income streams.





Intangible assets

ownership
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creativity
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The new millennium heralded the ‘Age of Information’ and a transition from the industrial age as significant as the transformation to the industrial era from agricultural society a couple of centuries earlier. Correspondingly there was a shift in power and wealth from land to factories and from now on towards information and ideas.

The Age of Intangibles

This new era could be called the Age of Intangibles because so much power and wealth is becoming tied up in **intangible assets** such as brands, market information, know-how and ideas. Though we cannot touch them, intangibles can be bought and sold like land or machines and represent an increasing proportion of global wealth. If you buy a share in Microsoft, only a small fraction of what you are buying is in land, buildings and computer hardware; most of what you are buying into is a share of Microsoft’s brands, licences, systems, expertise and morale of its employees – in other words the intangible stuff that will produce future profits. Conventional accountancy fails to find a good way of counting the value of intangibles, but the market takes it into account and is willing to pay far more than is represented on the balance sheet. It’s a multi-billion dollar equivalent of paying extra for that invisible goodwill when buying a shop for more than the value of the premises plus its stock.

Intellectual Property (IP)

Creative ideas have been around since well before someone designed and built the first wheel, but ownership of creativity has never been as clear-cut as ownership of natural resources or production facilities, and still isn’t. For creative entrepreneurs living in the Age of Intangibles, ownership of creativity has never been so important. The ownership of creativity is complex, both philosophically and legally.



Intellectual Property (IP) is the product of creative ideas expressed in works and **Intellectual Property Rights (IPR)** are the legal powers associated with the ownership, protection and commercial exploitation of those creative works.

Intellectual Property is at the heart of the creative industries which have been defined as 'those activities which have their origin in individual creativity, skill and talent, and which have a potential for job and wealth creation through the generation and exploitation of intellectual property.'¹⁶

Copyright, Designs, Trademarks and Patents

This is a complex legal area but these main points should provide the basis for further research before seeking specialist advice.

In legal terms, ideas themselves cannot be owned, only their expression in a specific way. So the idea for a novel cannot be protected by copyright, only its written form. In UK law, copyright exists as soon as an idea is transformed into some permanent / tangible form. Registration is not necessary. Copyright automatically protects works including writing, music, film, artwork, broadcasts and computer programs. Generally copyright lasts for the lifetime of the author plus 70 years. The copyright symbol © is not essential, but indicates the copyright owner and that permission should be obtained to copy their work. Unregistered design right arises when a design is created, in a similar way to copyright. Designs can also be registered through the UK Patent Office so long as they have a unique 'individual character'.

Trademarks are used to distinguish the goods or services of one business from another. Trademarks are not only the logos that companies and organisations use as badges, but can also be words, shapes, pieces of music, smells or colours. (Cadbury's familiar purple colour is a registered trademark – nobody else can use the same colour for chocolate packaging.) Trademarks apply to different classes of goods and services which is why Penguin can be a trademark for both books and biscuits. Mimashima Records checked out

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trademarks globally before deciding their trading name. Though 'shima' was used by companies in Japan, none were record labels and so they were not infringing other companies' trademark rights. **Medication** is a registered trademark of a nightclub promoter, not a drug company.

Trademarks can be unregistered, or registered permanently through the UK Patent Office. Patents themselves are used to register and protect inventions and are mainly concerned with mechanisms, designs, processes etc.

The UK Patent Office website provides useful information and details of registering patents, designs and trademarks.

There is no obligation to register trademarks, designs or inventions – indeed the recipe for Coca Cola is protected by simple old-fashioned secrecy rather than a patent. Without registration, however, it will be more difficult to obtain legal protection if someone else uses your design, trademark or invention for their own purposes.

Intellectual Property Rights (IPR)

Intellectual Property Rights include moral rights, publishing rights and mechanical rights. Moral rights relate to the creator's rights to receive recognition as the creator of their work and to prevent others from falsely claiming credit for the creator's work. Copyright may remain with the creator of the work, or be transferred to another person or company. Publishing rights may be granted to a third party to publish a work in a particular way, for a limited duration, in specified markets, without transferring copyright to the publisher. The term 'mechanical rights' is used in the music industry and refers to a particular recording of a work. So the moral rights, copyright and mechanical rights in a piece of music may belong to three different people or companies. Copyrights, trademarks and other intellectual property can be bought and sold like other commodities. The rights and ownership of *Yesterday* and other Beatles songs is a story in itself.

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In recent years the additional option of Internet downloads has created a new way to commercialise intellectual property. Rock legend Pete Dinklage had the foresight to insist on keeping the download rights to his music when negotiating with his record company in 2000. His songs are now available for download from the iTunes Music Store and the resulting royalties are his.

David Bowie, both an artist and a businessman, put his creativity into commerce in 1997 and pioneered the sale of bonds to raise \$55 million to buy back the copyrights in his music. He now controls the use of his works and repays bondholders a fixed rate of return on their investment from income generated by the exploitation of his intellectual property through numerous licensing deals.

Employees, Contractors and Clients

It's worth noting that an employee who creates something as part of their employment normally does so on behalf of their employer and so they do not own it themselves, the employer does. There should be a clear understanding between employer and employee about these issues, and this is normally set out in a contract of employment. New Mind's employees' contracts specify that the software they create belongs to the company. For freelance contractors and other situations the position is less clear cut and is negotiable. This is an important consideration in the business environment of the creative industries where there are so many freelance contractors and ad hoc partnerships as well as conventional employer-employee relationships. When engaged by a client to produce a creative product, ownership and future use of the fruits of creativity needs to be agreed in advance so the position is clear to all parties involved. The ownership and transfer of IP should be written into client contracts and terms of trade. See [JAB Design](#).

[Ideas in Action](#) — see page 70

So intangibles can be protected to some extent, but ownership of their means of production is virtually impossible. Food is the product of land somebody owns and goods the product of a factory owned by a firm, but ideas are the product of a brain belonging to a person who cannot be owned and can walk

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away from the business. If all your employees won the lottery jackpot in a syndicate and didn't return to work on Monday (it happened in Spain!) what value would be left in your creative enterprise? Land or factories cannot just walk away, but your human assets can.

What you have left in the business when all the employees have gone home is really all that you own. Only those things that are not dependent on individuals belong to the business itself. These tangible assets probably amount to not much more than office furniture, computers and some equipment. A creative enterprise's wealth is more likely to lie in its intangible assets, ie in its intellectual property such as copyrights, brands, trademarks and patents, appropriately registered and protected.

Generating ideas is the everyday work of creative and cultural enterprises and the expression of those ideas creates intellectual property. *Protecting* that intellectual property through the registration of trademarks, designs and patents prevents unfair exploitation of your creations so that you remain in business. Owning intellectual property that becomes an intangible asset underpins the value of your enterprise so that your business remains beyond you.

When you want to move on or retire, this is all you have to sell, because if the enterprise is entirely based on your skills and what's in your head, your business cannot be sold to someone else. **New Mind** put all their intellectual property into one of their companies so that it could be sold separately in the future.

Ideas in Action — see page 42

Turning Creativity into Cashflow

Whilst moral rights give recognition to the artist or creator, in business terms the point of intellectual property rights is to utilise (exploit) them to create revenue streams for their owner through direct sales and licensing agreements.

Many creative businesses view the whole area of intellectual property purely defensively, simply to protect their rights. Successful creative entrepreneurs also have an assertive approach. I will use a metaphor from the world of tangible

products, for example goods stacked in a warehouse. Yes, we need to lock them securely away at night to protect them from thieves. But during the day we need to open our doors widely and confidently to sell our wares. That's when we make our money. Whilst we need to protect our intellectual property from theft, we must also look for opportunities to sell it, which cannot be done if the focus is so much on protection that the doors are permanently locked.

Creative work can be repurposed, ie expressed in different ways through a range of saleable items. So for example an artist can sell not only the original work but also prints, postcards or even mugs and mouse mats.

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The [Red Production Company](#) licenses format rights and sells DVDs of its TV productions.

Licence agreements allow third parties to use intellectual property, for specific purposes and periods of time, in exchange for fees, without selling the intellectual property rights. For example David Hughes has licence agreements with the BBC. See [ESP Multimedia](#).

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In conclusion...
the business of creativity is the art of turning recognition into reward, and the science of turning intellectual property into income streams.



Key Points

- 1** Count your intangible assets as well as the tangible ones.
- 2** Assess your current intellectual assets as part of the PRIMEFACT analysis of your strengths and weaknesses.
- 3** Include your intellectual property – and its protection – in your business strategy.
- 4** Intellectual property should not only be protected but also exploited. How can you turn it into income directly or indirectly?
- 5** Are you sure you are not infringing on other people's intellectual property rights?
- 6** Are your contracts with employees, clients and contractors clear about the ownership and transfer of intellectual property rights?
- 7** A creative enterprise's wealth is more likely to lie in intangible assets than tangible ones.
- 8** What value do you have left in the business when all the employees have gone home?
- 9** Get expert advice on registering designs, trademarks and patents. How much value lies in the parts of your business that cannot just walk away?
- 10** Remember: the business of creativity is the art of turning recognition into reward and the science of turning intellectual property into income streams.



Ideas in Action

Medication

Student Club Night and Promotions Company

Medication® is the registered trademark of Medication Ltd – not a pharmaceuticals company but the promoters of Liverpool's most successful student night out.

Founder Marc Jones registered his brand as a trademark with the UK Patent Office under Class 41, which includes 'entertainment services; nightclub and discotheque services'.

Marc explained: "It would be impossible to register 'Medication' as a trademark for any kind of medical product, but that's not the business we are in, and there was no problem registering it for exclusive use as an entertainment brand."

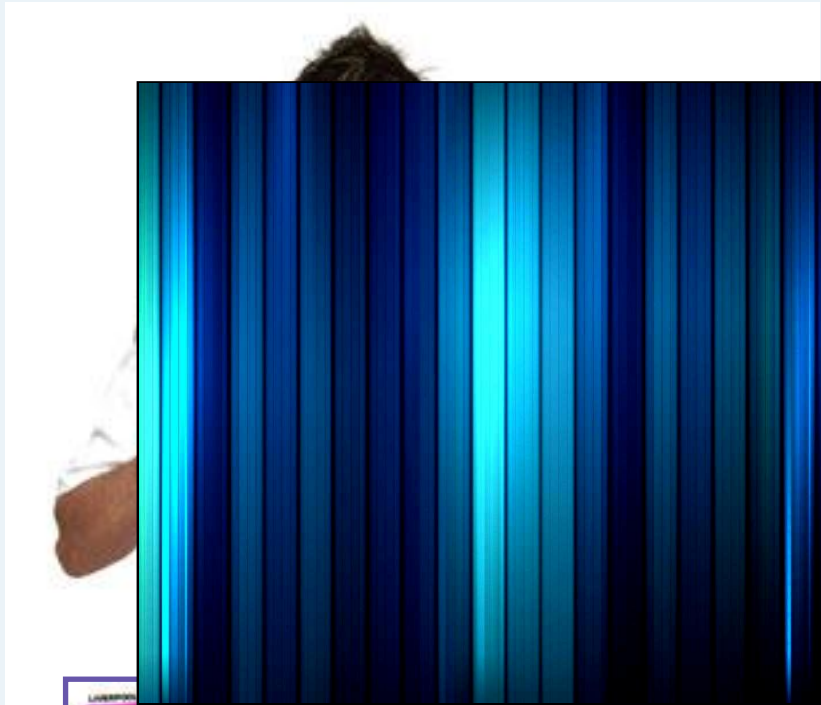
Marc and brother Jason Jones plan to build the brand and diversity into merchandise including music publishing and clothing. By thinking ahead, they also registered Medication as a trademark in Class 09 (sound and video recordings in the form of discs or tapes) and Class 25 (clothing, footwear and headgear).

Medication is a business with no significant fixed assets and Marc and Jason recognise that their enterprise is based on their know-how and another intangible asset – their brand and registered trademark.

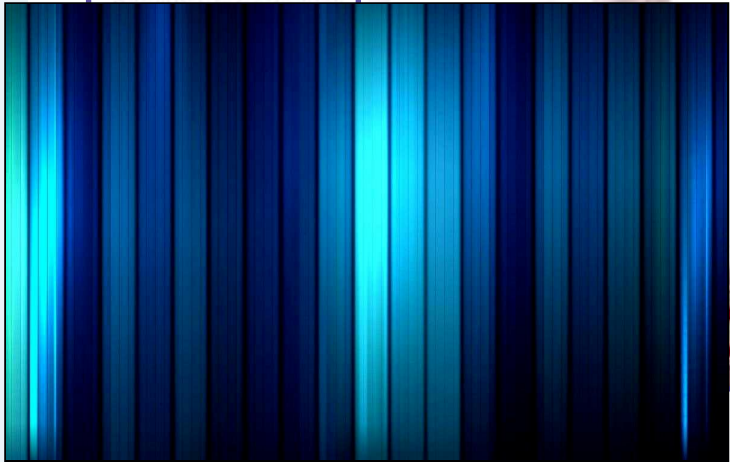
The protection of the enterprise's Intellectual Property through the registration of their brand as a trademark puts them in a position to expand their 'student night' business to other cities. The trademark registration in additional classes enables them to diversify the brand into other activities such as merchandising.

Furthermore, they are now in a strong position to negotiate joint ventures with other businesses hoping to capitalise on the 'Medication' brand. At the time of writing, Medication have just started a joint venture with Liquidation, one of Liverpool's leading alternative nights, called 'Indiecation' – a new Friday night that is looking to capture the nation's reawakened interest in big guitars, fuzzy amps and skinny boy and girl bands.

www.medication.co.uk



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MEDICATION



- * **Trademarks** (see pg 54)
- * **Intangible Assets** (see pg 53)
- * **Brands** (see pg 53)

