

Philosophy of a Business Legal Counselor

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Agenda

- Philosophy of Business Law - Kulkin's Corollaries
- Business Models 101
- Introduction to popular business models
- Determining liability from a business model
- Business intake
- The importance of scalability
- Presenting risk



Kulkin's Corollaries

- Legal counsel serves the business model, not the other way around
- Our place is to assess and advise on risk, not to judge the risk taker
- There is no such thing as a cookie cutter client or cookie cutter contract
- Agreements are living documents meant to solve problems, clarify, and protect
- Only the client or the other side of a transaction may “kill” a deal
- Educating the client is also protecting them

Business Models 101

How do you define business model?

Investopedia: The plan implemented by a company to generate revenue and make a profit from operations. The model includes the components and functions of the business, as well as the revenues it generates and the expenses it incurs

In other words...

ITS HOW A BUSINESS MAKES ITS MONEY

Spotting Liability in the Business Model

Step 1: Chart out all of the parties involved

Step 2: Mark off the interactions between them

Step 3: Check for regulatory requirements and licensing

Remember: Relationships are at the heart of business activities as well as liability

B -> B vs B -> C

- The question of who the client's customer is can have a huge impact on the business model
- On the legal side, Business to Consumer businesses require more direct additions to agreements (e.g., NY's three day rule)
- Business to Business has more indirect potential liability, especially if the client's business is within the chain of production

Popular Business Models

- Direct Sales
- Franchise
- Freemium
- Subscription
- Value Added Reseller
- Advertising Model
- Matchmaker Model

Direct Sales

- Marketing and selling products to consumers directly, away from a fixed retail location
- The internet and other electronic distribution channels have popularized the direct sales model
- Note locus of transaction issues

Franchise Model

- Business in a box
- Franchising is the practice of using another firm's successful business model
- Franchisor receives liability protection and a paid distribution chain
- Franchisee receives proven business model plus support and marketing from the Franchisor

Freemium Model

- Offering basic or initial transactions free of charge while charging for advanced or special features
- Popular in web hosting and mobile video games.
- Micro-transactions or “upgrades” are the main source of revenue

Subscription Model

- Where a customer must pay a subscription price to have access to the product/service
- Generally, these services rely on automatic renewals for sustained revenue

Value Added Reseller

- Value Added Reseller is a model where a business makes something which is resold by other businesses but with modifications which add value to the original product or service. These modifications or additions are mostly industry specific in nature and are essential for the distribution.
- Liability comes from the additional design
- Popular in the electronics industry

Advertising Model

- Businesses using this model do not obtain revenue from their end users.
- Instead, they obtain revenue through advertising dollars.
- In this instance, the company has two “masters”: the advertisers and the consumers

Matchmaker Model

- These clients make their money by “matching” customers together for their own transaction
- Matchmaker liability is mostly derived from the resulting transaction not performing to expectation
- Disclaimer of warranties is crucial to a matchmaker

Intake Points

- The facts that the client presents are only part of the story
- Focus on the nature of the relationships involved
- Determine the client's points of main concern (which may not be yours)
- Gain an understanding of the client's level of experience
- Ask about their entrepreneurial philosophy
- Structure the transaction around the client's goals

Scalability of Business

- Many businesses fail because of their inability to scale up or down
- Inexperienced entrepreneurs do not actively consider scalability until its too late
- The prudent business attorney structures a business that can scale up or down depending on market conditions

Presenting Risk to Clients

- The number one complaint entrepreneurs have against business attorneys is that they only say “no”
- Attorneys are risk averse by nature
- Presenting options strengthens your relationship with the client

Don't be Dr. No! Be Dr. How!



Questions?



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