



AMERICAN
BANKRUPTCY
INSTITUTE

VALCON 2025

Value of Content

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PANEL OVERVIEW

- Discuss use by large language models (LLMs) of copyright-protected material, supported by empirical data; delve into whether LLMs are copying, improving from and/or providing copyrighted material through outputs (and whether these distinctions matter legally or from a damages perspective)
- Analyze the legal landscape
- Address challenges and potential solutions associated with valuation:
 - Valuation of the input (copyrighted material)
 - Valuation of the technology utilizing the input (the model)
 - Valuation of the output (the alleged infringement)



Setting the Stage

How are Large Language Models Using Third-Party Copyrighted Material?

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COMMERCIAL WEB DATASET STUDY

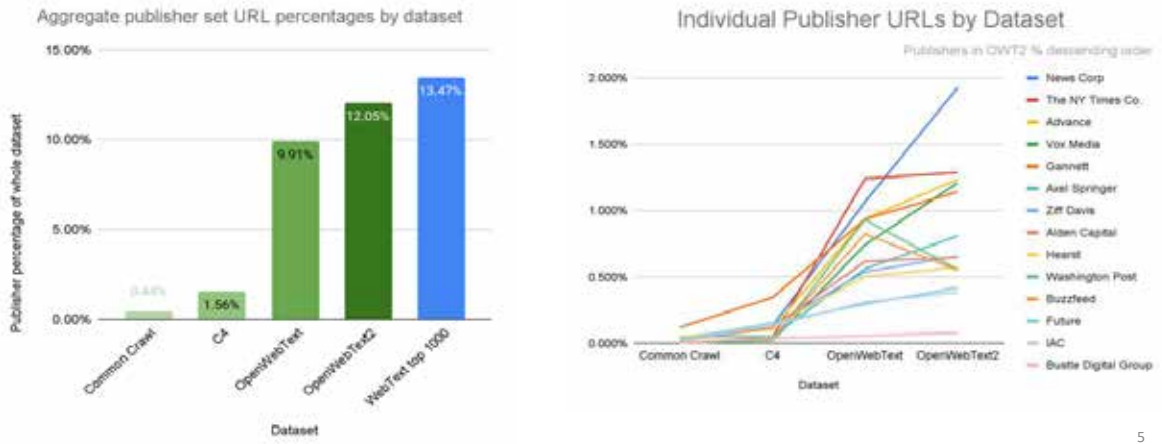
	GPT-2	GPT-3	T5	LaMDA	LLaMA
Common Crawl		filtered			filtered
C4			✓	✓	✓
Other web				✓	✓
"Public forums"				✓	
WebText	✓				
WebText2		✓			
Wikipedia		✓	✓	✓	✓
Books corpora		✓			✓

Advance (Condé Nast, Advance Local)
 Alden Global Capital (Tribune Publishing,
 MediaNews Group)
 Axel Springer
 Bustle Digital Group
 BuzzFeed
 Future plc
 Gannett
 Hearst
 IAC (Dotdash Meredith and other)
 News Corp
 The New York Times Company
 Penske Media Corporation
 Vox Media
 The Washington Post
 Ziff Davis

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COMMERCIAL WEB DATASET STUDY



PUBLIC DEAL TERMS

Date	LLM co	Publisher	Terms
7/13/2023	OpenAI	AP	Single-digit mm/yr for 2 yrs for AP's archives
12/13/2023	OpenAI	Axel Springer	\$25m-\$30m/3 yrs
2/21/2024	Google	Reddit	\$203m total, \$66.4m in 2024
3/8/2024	"Large tech co"	John Wiley	One-off \$23M for journal + books archives
4/29/2024	OpenAI	FT	\$5m-\$10m/yr for archives + RAG
5/7/2024	OpenAI	Dotdash Meredith	\$16m/yr fixed + variable component
5/8/2024	Microsoft	Informa	\$10m initial fee + annual payments for 3 yrs
5/22/2024	OpenAI	News Corp	~\$250m/5 yrs for archives + RAG (time delay)
11/19/2024	Microsoft	HarperCollins	\$5k per book (split between HC and author)

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The Legal Landscape Building the Case For / Defending the Case Against Copyright Infringement

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AI USUALLY REFERS TO TECHNOLOGY THAT
ALLOWS COMPUTERS TO MIMIC HUMAN COGNITIVE FUNCTIONS

- **Machine learning:** programs trained to look for patterns in a set of data, draw conclusions, and apply those conclusions to make predictions about new data
- **Generative AI:** programs that use training data to create models that can produce new content (text, images, video, etc.), usually in response to prompts

“Fancy autocomplete”

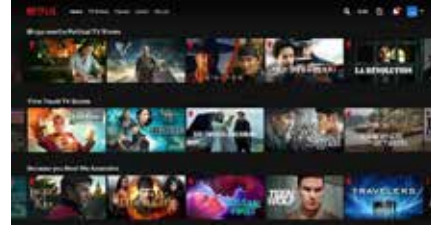


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CURRENT USES OF ALL FORMS OF AI/MACHINE LEARNING

- Automating workflows and processes
- Reviewing and summarizing large datasets
- Predictive modeling
- Real-time analytics
- Medical diagnosis
- Recommending entertainment
- Speech/image recognition
- Translation
- Video/audio restoration
- Content moderation
- Cybersecurity
- Generative AI



GENERATIVE AI

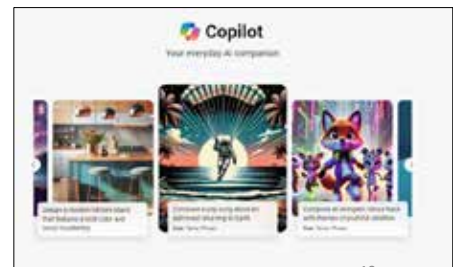
Programs that use training data to create models that can produce new content (text, images, video, etc.), usually in response to prompts

- “An attempt to reorganize knowledge interactively”
- Enter a **prompt** in plain language, get an **informed result**
- Produces **plausible** content very quickly and relatively cheaply



Current Uses of Generative AI

- To provide statistically **plausible textual responses** to queries
- To create and modify **images, music, and video**
- To generate **computer code**
- To **“enhance”** online searching and other technology



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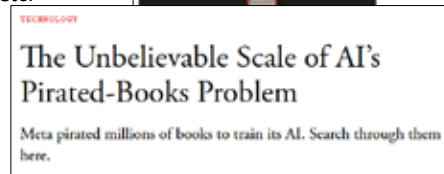
COPYRIGHT AND IP-SPECIFIC CONCERNS

Key generative AI models took third-party content to use as training data without consent

What did they take? Everything they could.

For example:

- “**Common Crawl**” - the entire web from 2007 forward
- Archives of all major **newspapers**
- All of **YouTube**, **Getty Images**, **Github**, **Reddit**, **Wikipedia**, etc.
- **Content** posted on **social media platforms**
- **Emails** and **instant messages** sent through platforms
- **Interactions** with software tools
- **Pirated media archives**



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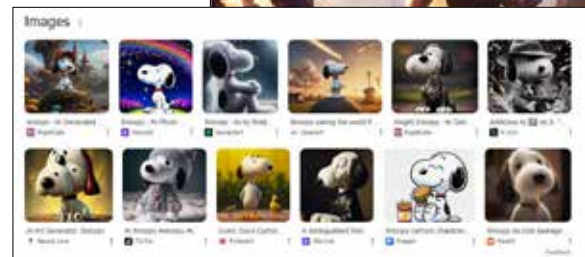
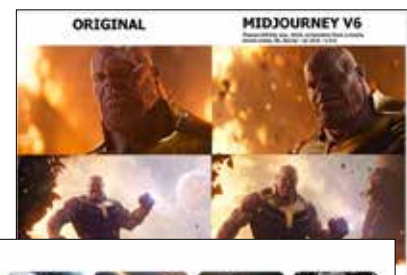


COPYRIGHT AND IP-SPECIFIC CONCERNS

Key generative AI models copied third-party content to use as training data without consent

How did they use it, and how do they continue to use it?

- To **train** their generative AI models
- **Encoded** in their generative AI models
- In **responses** produced by their generative AI models



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COPYRIGHT AND IP-SPECIFIC CONCERNS

Is this **unauthorized copying**?

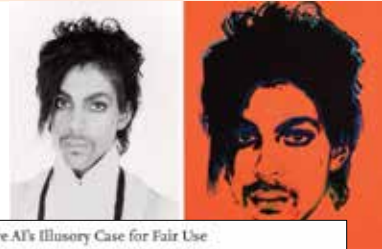
- To create training data, **absolutely**
- Encoded in its models, **arguably**
- In output, at least **sometimes**

If it is unauthorized copying, is it **infringement**? Is it **fair use**?

- At the moment, there's **no clear answer**

If the generative AI companies are found liable, what's their **potential exposure**?

- Copyright law allows for plaintiff's **actual damages** and/or defendant's **wrongful profits**, or **statutory damages** of up to **\$150K per work**, plus **injunctive relief**
- Copyright law also allows for **destruction of infringing materials** and **"articles by means of which such copies or phonorecords may be reproduced"**



The Tough Math

Valuing the Inputs, the Technology and the Outputs



VALUING THE INPUTS, THE TECHNOLOGY AND THE OUTPUTS

- Purpose of valuation – for litigation (damages), for a license (or both), for restructuring / bankruptcy purposes (fairness)
- The inputs (copyrighted content)
 - Is the content already being monetized?
 - DCF
 - Subscription revenue
 - Possible relevance of ad revenues
 - Revenue sharing?
 - Relief from royalty?
 - Growth forecast and reinvestment
 - Customer acquisition costs
 - Customer lifetime value
 - Churn rate
 - Other methodologies
 - Comparable firm analysis
 - Market opportunity
 - Valuation methodologies for “stale” content or content that is not otherwise being monetized
 - Archival material
 - Lower barrier to entry?

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VALUING THE INPUTS, THE TECHNOLOGY AND THE OUTPUTS

- Does the type of content matter?
 - Written material vs. podcast
 - Podcast example – is this content being used for the words/truth of the matter vs. is it being used to simulate conversation/verbal expression?
 - Art
 - Nightshade and Gaze: University of Chicago professor “poisoning” digital images so that when AI scrapers use them to learn, they become “scrambled”
 - Is this too little, too late?
- Thompson Reuters v. Ross Intelligence as instructive
 - Distinction of how AI data is used: commercial vs. transformative
 - Can an independent valuer do anything more than make assumptions?
- Is the Google Books copyright litigation (and the associated Google Book Search Settlement Agreement (which never went into effect)) instructive?
 - Augmenting public knowledge vs. substantive substitute for protected IP

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VALUING THE INPUTS, THE TECHNOLOGY AND THE OUTPUTS

- Outputs: how does the valuer account for uncertainty surrounding IP ownership?
 - Shift burden to AI owner (e.g., proof of internal policies to protect the company's AI model, output and procedures)
 - Assumption that Fair Use Doctrine applies (i.e.: Google Books ruling? Impact of Thompson Reuters vs. Ross Intelligence?)
 - First Chicago? Combination of low, mid and high cases?
 - Adjustment of discount rate?
- Does size matter?
 - Mega players in the space can afford litigation, have leverage to license content from creators

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WHAT NEXT?

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As both outside and in-house counsel, Evan Gourvitz has successfully litigated and counseled clients on intellectual property disputes for more than 25 years.

He has handled copyright, trademark, patent, trade secret, false advertising, right of publicity, and name/image/likeness (NIL) disputes, as well as First Amendment and general commercial litigation, in federal and state courts and before the Trademark Trial and Appeal Board and International Trade Commission, for clients in the finance, technology, consumer products, entertainment, publishing, fashion, alcoholic beverage, and pharmaceutical industries, among others.

Evan has particular experience with social media, with which he has been involved both personally and professionally for more than 30 years. He regularly advises clients on cutting-edge Internet, digital, and tech issues, including Artificial Intelligence (AI), large language models (LLMs), and machine learning; takedown requests and the removal of infringing, libelous, and offensive materials from the Internet; the use of trademarks and celebrity names and images on social media; dealing with copyright trolls in a cost-effective manner; cybersquatting and cyberfraud; UDRP proceedings to recover infringing domain names; doxing, deepfakes, impersonation, and cybersecurity hygiene; cryptocurrency, NFTs, the Metaverse, and Web3; social media reputation management; and how to prevent disputes from "going viral."

A recognized thought leader on IP-related topics, Evan has written and been quoted in publications including *The New York Times*, *World IP Review*, *Bloomberg Law*, and *Law360*, and has presented in venues including the International Trademark Association Annual Meeting (INTA), the American Intellectual Property Law Association (AIPLA) Annual Conference, the Center for Intellectual Property x Innovation Policy Annual Conference, and the MIT Sloan School of Management, among others.

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Mr. Klotz is a testifying and consulting expert specializing in bankruptcy, cross-border insolvencies, commercial finance, intellectual property, and contract-related disputes.

He provides expert testimony in litigation and arbitration proceedings, drawing on his extensive experience in US Chapter 11 cases, international insolvency proceedings, cross-border secured lending, asset investments, divestitures, out-of-court restructurings, and intellectual property development and valuations. Mr. Klotz's expertise extends to all kinds of movable tangible and intangible assets, particularly as they relate to consumer intellectual property.

This expertise stems from three decades of managing transactions with both distressed and healthy companies across the retail, commercial, industrial, transportation, and technology sectors. Mr. Klotz has worked on cross-border transactions that have spanned more than 40 countries throughout North America, Europe, Latin America, Australia, the Middle East, and Africa.

Prior to joining Brattle, Mr. Klotz was a Senior Managing Director at a global distressed investment, restructuring, and valuation firm, where he was responsible for cross-border transactions and global expansion. Before becoming an investment professional, he practiced law at leading corporate firms, with a concentration in bankruptcy, insolvency, secured and debtor-in-possession (DIP) financings, and distressed M&A transactions.

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George Wukoson
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George Wukoson is General Counsel of Ziff Davis' Health & Wellness division, the Everyday Health Group, where he manages the legal function and provides strategic counsel to support its portfolio of data- and analytics-driven digital media and services businesses. He has led the company's participation in bankruptcy sales and transactions and strategic partnerships involving first- and third-party digital assets, data licensing, and artificial intelligence.

In addition to his role at Everyday Health Group, George serves as Ziff Davis' Lead Attorney on AI Matters, overseeing AI governance initiatives and advising cross-functional leadership on legal and regulatory considerations related to artificial intelligence. He has written and spoken on topics including the use of commercial web content in large language model training and the impact of frontier copyright litigation on web publishing.

Prior to joining Ziff Davis, George was a litigator and counselor at Davis Wright Tremaine LLP, advising media and technology clients on intellectual property matters. He began his career at Dechert LLP. George holds a B.A. in Comparative Literature from Dartmouth College and a J.D. from New York University School of Law.

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Richelle Kalnit is Chief Commercial Officer, Senior Vice President at Hilco Streambank. She advises companies, lenders and stakeholders on matters related to intangible assets, including brands, software, patent portfolios, digital assets and marketplace accounts.

Richelle's services often take the form of sell-side mandates, where she brings to bear nearly 2 decades of legal and M&A deal experience managing the nuances and unique aspects of the sale of these types of assets. She is responsible for developing an unmatched commercially reasonable sale process product under Article 9 of the Uniform Commercial Code for intangible assets, and is adept at managing and leveraging the dynamics surrounding those processes. Richelle is a frequent panelist and contributor related to asset sales, intangible assets and AI.

Richelle joined Hilco Streambank following a legal career at Cooley LLP and King & Spalding LLP.

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VALCON 2025
May 14-15 | Las Vegas, NV

Valuation of Intellectual Property (IP)

Professor Israel Shaked

The Michel-Shaked Group
Boston University

Dr. Varda Shaked

The Michel-Shaked Group

Note: All the J. Crew information in this presentation is available in the public domain (court filings: Case 20-32181-klp, Doc. 767-2)



THE MICHEL-SHAKED GROUP



Professor Shaked's Credentials

Professor Shaked's Credentials



- Doctor of Business Administration (DBA), Harvard Business School.
- Master in Business Administration (MBA) in Finance.
- BA in Economics, BA in Statistics.
- Over 43 years: Professor of Finance and Economics, Boston University.
- Over 40 years: Co-Founder and Managing Director of The Michel-Shaked Group.
- Authored several books and numerous academic and trade articles.

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Professor Shaked's Credentials



- Testified before the U.S. Congress's House Ways and Means Committee.
- Testified both on behalf of and opposed to the Internal Revenue Service (IRS).
- Consulted the U.S. Department of Justice (DOJ).
- Consulted the Federal Deposit Insurance Corporation (FDIC).
- Valued/analyzed over 500 companies during the past 50 years.

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Presentation Outline

Background

- Definition and Types of Intellectual Property (“IP”) (i.e., Intangible Assets).

IP Valuation Methodology

- Overview of typical approaches.

IP Valuation (J. Crew)

- Relief-from-Royalty (“RFR”) approach.
- Limitation of Market Comparable Royalty Rate.
- Profit Split Method (“PSM”).

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Background

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Definition and Types of IP

- **Definition of IP:**
 - An asset that is **not tangible** (cannot be defined by its physical parameters).
 - Can be sold, bought, licensed, exchanged or gratuitously given away.
 - Must be expressed in some discernable way to be protectable.
- **Primary Types of IP:**
 - **Patents.**
 - **Brand Names.**
 - **Registered Trademarks.**
 - **Technical Know-How.**
 - **Copyrights.**
 - **Trade Secrets.**

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IP Valuation Approaches

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Valuation Methodology of IP

Potential Valuation Approaches

- **Income Approach:** Uses the future cash flow generated from the IP, using one of:
 - DCF method.
 - Venture-Capital method.
 - RFR method, which relies on comparisons of royalty rates.
- **Market Approach:** Uses transactions or licensing agreements involving suitably comparable intangible assets.
- **Cost Approach:** Uses the cost it would take to replace the IP (via acquisition or reconstruction) with a comparable substitute intangible asset.

We integrate the Market Approach (**Market Comparable Royalty Rate approach**) into the Income Approach (**RFR method**).

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Valuation Methodology of IP

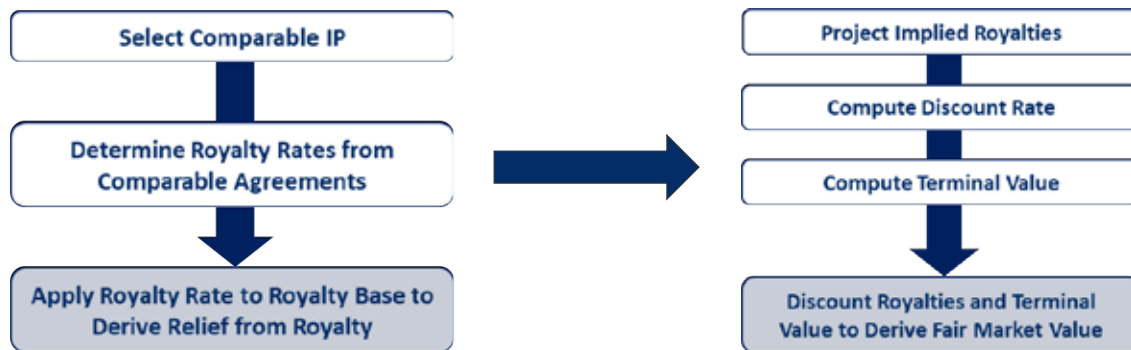
What is Relief From Royalty?

The **Relief-From-Royalty (“RFR”)** approach estimates **implied royalties** over a projection period that the IP owner is “**relieved**” from paying due to **owning** the intangible asset.

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Valuation Methodology of IP

Integrating the Comparable Royalty Rate into the Income Approach



We applied this integration to determine the Comparable Royalty Rate for valuing J. Crew's IP.

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IP Valuation – J. Crew

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Valuation of the J. Crew IP

Scope of Engagement

- At the request of the **Official Committee of Unsecured Creditors**, we were asked to:
 - Determine the **enterprise value of the J. Crew Group** (“J. Crew”) as of September 11, 2020, the date that J. Crew was expected to emerge from Bankruptcy.
 - Determine the **fair market value** of the J. Crew and J. Crew Factory domestic **trademarks and servicemarks** (the “J. Crew IP”) as of September 11, 2020.

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Valuation of the J. Crew IP

List of J. Crew U.S. Trademarks and Servicemarks (Page 1 of 3)

Schedule 7(b)
Intellectual Property
U.S. Trademark Registrations

COUNTRY MARK	CLASS	APPL. NO.	APPL. DATE	REG. NO.	REG. DATE	STATUS
United States	1655	25	86/028914	8/5/2013	4485298	2/18/2014 REGISTERED
United States	759	25	85/711615	8/23/2012	4437416	1/19/2013 REGISTERED
United States	759 BEHIND THE LENS	41	85/221882	2/23/2011	4292872	2/19/2013 REGISTERED
United States	COOPER'S PICKS	35	77/912929	8/15/2010	4112314	5/15/2012 REGISTERED
United States	CREW	25	76/014732	3/31/2006	2431705	3/27/2007 REGISTERED
United States	CREW	25	73/465887	2/19/1994	1348064	7/9/1995 REGISTERED
United States	CREWCUTIES.COM	35	85/567623	8/5/2012	4155704	5/17/2012 REGISTERED
United States	CREWCUTES	14	86/261689	4/24/2014	4652335	12/9/2014 REGISTERED
United States	CREWCUTES	18, 26, 35	76/564692	2/16/2005	3163666	10/24/2006 REGISTERED
United States	CREWCUTES	25	76/437243	5/12/2004	3167779	6/20/2006 REGISTERED
United States	CREWCUTES (Key logo) and Elephant Design	14, 16, 18, 25, 26	75/066187	8/17/2009	4072627	7/19/2012 REGISTERED
United States	 CREWCUTES					
United States	CREWCUTES BABY	25	85/489131	11/23/2011	4464928	5/14/2013 REGISTERED

COUNTRY MARK	CLASS	APPL. NO.	APPL. DATE	REG. NO.	REG. DATE	STATUS
United States	DISCOVERED, FORGED BY US, COLLECTED BY YOU	35	86/080493	5/12/2013	4485016	2/18/2014 REGISTERED
United States	EXPLORE WITHOUT FOOTPRINTS	25	77/848535	10/2/2009	3958772	5/19/2011 REGISTERED
United States	FACTORY FIRST	35	85/966802	4/16/2013	4432553	11/12/2013 REGISTERED
United States	GARMENTS FOR GOOD	18, 25, 35	85/883500	3/19/2013	4664331	12/30/2014 REGISTERED
United States	GARMENTS OF DISTINCTION	18, 25, 35	85/978316	12/28/2011	4293320	2/19/2013 REGISTERED
United States	GARMENTS OF DISTINCTION	25	85/595626	12/28/2011	4489944	2/25/2014 REGISTERED
United States	GIFT (BETTER) GARDEN	35	86/677799	6/28/2013	4915632	6/12/2016 REGISTERED
United States	IN GOOD COMPANY	35	85/274606	3/23/2011	4028920	9/20/2011 REGISTERED
United States	J. CREW	09, 14, 18, 21, 24, 25, 35	86/512488	7/9/2014	4882454	1/5/2016 REGISTERED
United States	J. CREW	09, 16, 20, 21, 28	85/883526	3/19/2013	4598134	9/2/2014 REGISTERED
United States	J. CREW	09, 35	85/533440	2/3/2012	4190784	8/14/2012 REGISTERED
United States	J. CREW	14	76/706289	5/14/1999	2462505	6/19/2001 REGISTERED
United States	J. CREW	18, 25, 42	73/411551	8/13/1983	1368888	12/11/1984 REGISTERED
United States	J. CREW	26, 28	86/125862	8/12/2013	4756895	6/16/2015 REGISTERED

(1) Perfection Certificate - 13.00% Senior Secured Notes Due 2021, Schedule 7b (CREW_UCC00003118).

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Valuation of the J. Crew IP

Duration of IP's "Life Expectancy"

U.S. Utility Patent	• 20 years from the date the patent application is filed.
U.S. Design Patent	• 15 (or 14) years from the date of the grant.
U.S. Trademark	• As long as the trademark is used in commerce.
Copyright Protection	• If created after January 1, 1978, protection lasts for 70 years after the death of the author.
Works "Made for Hire"	• Protected for 95 years from first publication, or 120 years from creation (whichever expires first).

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Valuation of the J. Crew IP

Plugging the Comparable Royalty Rate Into the DCF Template

(\$ millions)	For the Fiscal Year					Terminal Value
	Stub	2021	2022	2023	2024	
Net Sales	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Royalty Rate						
Relief from Royalty (Pre-Tax)						
Unlevered Cash Taxes @ 25.2% Rate						
Relief from Royalty (After-Tax)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Terminal Value						\$ -
Discount Period						
Discount Factor @ 8.2% WACC						
Discounted Free Cash Flows	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
PV of Cash Flows	\$ -					
PV of Terminal Value						
Indicated Fair Value before TAB Factor	\$ -					
Tax Amortization Benefit Factor						
Concluded Fair Market Value	\$ -					

PGR

The following pages present our analysis supporting the concluded Fair Market Value of J. Crew's IP.

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Valuation of the J. Crew IP

Market Comparable Royalty Rate Approach

- We used the **Market Comparable Royalty Rates** (“Comparable Rates”) approach to estimate the royalty rate and applied it to J. Crew’s net sales to derive the implied royalties and terminal value.
- **Similar to the CompCo and CompM&A** methodologies, this approach identifies comparable licensing agreements or IP acquisitions.
- To determine an appropriate market royalty rate, we reviewed the trademark database **Markables**.

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Valuation of the J. Crew IP

Market Comparable Royalty Rate Approach – Markables Screening Criteria

- We conducted a screen using the following criteria:
 - **Product Classification Codes:**
 - 282 - Wearing apparel, except for fur apparel.
 - 292 - Luggage, handbags and the like; saddlery and harness; other articles of leather.
 - 293 – Footwear, with outer soles and uppers of rubber or plastics, or with uppers of leather or textile materials, other than sports footwear, footwear incorporating a protective metal toe-cap and miscellaneous special footwear.
 - 294 – Sports footwear, except skating boots.
 - **Years:** 2010 to 2019 (data 2020 not available).
 - **Countries:** United States.

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Valuation of the J. Crew IP

Market Comparable Royalty Rate Approach – Markables Screening Results

The screening criteria **produced 78 results** for comparable trademarks. After eliminating trademarks that were underlined by brands/businesses that were not comparable to J. Crew, **62 results remained** (“Trademark Comparables”).

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Valuation of the J. Crew IP

Market Comparable Royalty Rate Approach – Markables Screening Results

(\$ millions)				Royalty	Profit	Implied	
#	Brand Name/Business	Business Activities	Year	Rate	Split	Profitability	
1.	Allen Edmonds	footwear; premium men's leather shoes	2016	7.5%	37.3%	20.0%	
2.	Alstyle Apparel, LLC	apparel; T-shirts and fleece sold to screenprinters, embellishers, and mass-marketers	2016	0.6%	3.2%	18.9%	
3.	American Sporting Goods Corporation (Avia, RYKA, and Nevados)	footwear; athletic footwear; performance footwear; sports shoes	2011	1.8%	24.8%	7.4%	
4.	ANN INC.	fashion vertical; specialty retailer of womens apparel, footwear and accessories	2015	3.6%	44.3%	8.1%	
5.	Anvil Knitwear, Inc.	apparel; knitwear; T-shirts for the printwear and private label markets	2012	0.3%	5.0%	5.4%	
⋮		⋮		⋮			
56.	The Timberland Company	footwear; apparel; casual and outdoor footwear and apparel	2011	9.0%	57.7%	15.5%	
57.	Topline Corporation	footwear; women's footwear; private label	2011	1.0%	25.4%	3.9%	
58.	TravisMathew, LLC	apparel; sportswear; golf and lifestyle apparel for men	2017	8.0%	63.3%	12.6%	
59.	Umi LLC	footwear; children's footwear	2010	5.2%	72.3%	7.2%	
60.	United Retail Group Inc.	fashion; apparel; retail; vertical	2010	1.3%	N/A	N/A	
61.	Vionic Group LLC	footwear; stylish, supportive, biomechanic footwear	2018	7.3%	31.6%	23.2%	
62.	Warnaco, Inc.	apparel; swimwear; intimatewear; jeanswear	2013	3.3%	20.1%	16.6%	
				Minimum	0.1%	3.2%	0.8%
				Lower Quartile	2.8%	25.4%	7.4%
				Median	5.6%	42.0%	14.2%
				Average	6.5%	44.3%	16.0%
				Upper Quartile	7.5%	59.2%	20.0%
				Maximum	67.2%	100.0%	69.5%

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Valuation of the J. Crew IP

Market Comparable Royalty Rate Approach – Royalty Rates and Profitability

- With this 5.6% in mind, it's important to note the linear relationship between royalty rates and profitability. For example:
 - "Statistical analysis shows a linear relationship between reported royalty rates and profitability measures, and that this suggests that the licensing market is efficient and that 'cost structure and profitability across industries have been factored into royalty rate negotiations.'"¹
 - "The regression analyses indicate that there are linear relationships between the reported royalty rates and the profit margins. Precisely, the profit margins explain about one-third to 40 percent of the variations across 14 industries, and coefficients for each of the profit margins are significant at 2 percent to 3 percent levels."²

Therefore, it is our opinion that, all else being equal, a company with lower profitability will have a lower royalty rate.

(1) Heberden, Tim, "International Licensing," Deloitte, 2011, p. 12.

(2) Kremmerer, Jonathan E. and Jiaqing Lu, "Profitability and royalty rates across industries: Some preliminary evidence," KPMG, 2012, p. 10.

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Valuation of the J. Crew IP

Market Comparable Royalty Rate Approach – Is a 5.6% Royalty Rate Reasonable?

Economic Rationale

Royalty Rate < EBIT Margin

(\$ millions)	For the Fiscal Year				FY2021 - FY2024	
	2021	2022	2023	2024	Average	Median
Total Revenue¹	\$ 1,505	\$ 1,518	\$ 1,496	\$ 1,503		
EBIT	\$ 52	\$ 57	\$ 46	\$ 46		
EBIT Margin	3.5%	3.7%	3.1%	3.1%	3.3%	3.3%

Given the company's profitability, a 5.6% royalty is unreasonably high. So, how do we resolve this issue?

(1) Disclosure Statement dated June 24, 2020, Exhibit B, p. 8 (Docket #541).

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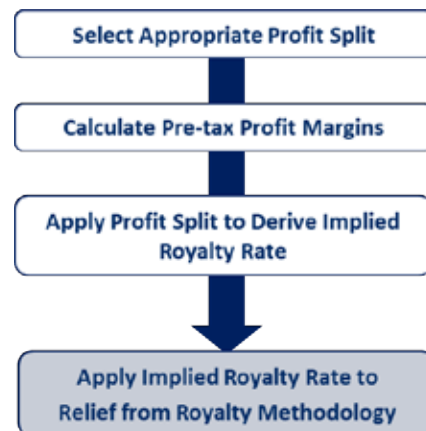
The Profit Split Method (“PSM”) – J. Crew IP

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Valuation of the J. Crew IP

Profit Split Method – Definition and Use for Determining Royalty Rate

- The PSM assumes that the licensee of certain trademarks would split a portion of the pre-tax profits derived from such trademarks with the licensor.
- This method ultimately applies a percentage to the profit margins (usually EBIT) and assumes the resulting margin to be an appropriate royalty rate.
- In line with our previous analyses, we relied on the data obtained from Markables in order to determine an appropriate profit split for valuing the J. Crew IP.



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Valuation of the J. Crew IP

Markables Screening Results – Lower Quartile & Median Profit Splits

	Royalty Rate	Profit Split	Implied Profitability
Minimum	0.1%	3.2%	0.8%
Lower Quartile	2.8%	25.4%	7.4%
Median	5.6%	42.0%	14.2%
Average	6.5%	44.3%	16.0%
Upper Quartile	7.5%	59.2%	20.0%
Maximum	67.2%	100.0%	69.5%

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Valuation of the J. Crew IP

Profit Split Method – Pre-Tax Royalty Rate

- Based on the screen results:
 - Lower Quartile profit splits → 25.4%.
 - Median profit splits → 42.0%.
- Applying these profit splits to J. Crew's projected EBIT margins, results in the following calculation of royalty rates:

(\$ millions)	For the Fiscal Year				FY2021 - FY2024	
	2021	2022	2023	2024	Average	Median
EBIT Margin	3.5%	3.7%	3.1%	3.1%		
Implied Pre-Tax Royalty Rates:						
25.4% Profit Split (1)	0.9%	0.9%	0.8%	0.8%	0.8%	0.8%
33.7% Profit Split (2)	1.2%	1.3%	1.0%	1.0%	1.1%	1.1%
42.0% Profit Split (3)	1.5%	1.6%	1.3%	1.3%	1.4%	1.4%

We conservatively used the midpoint between the median and lower quartile profit splits, resulting in a 1.1% royalty rate for J. Crew's IP.

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Valuation of the J. Crew IP

Concluded Fair Market Value

(\$ millions)	For the Fiscal Year					Terminal Value
	Stub	2021	2022	2023	2024	
Net Sales ¹	\$ 642	\$ 1,467	\$ 1,479	\$ 1,456	\$ 1,462	\$ 1,462
Royalty Rate	1.1%	1.1%	1.1%	1.1%	1.1%	1.1%
Relief from Royalty (Pre-Tax)	7	16	16	16	16	16
Unlevered Cash Taxes @ 25.2% Rate	(2)	(4)	(4)	(4)	(4)	(4)
Relief from Royalty (After-Tax)	\$ 5	\$ 12	\$ 12	\$ 12	\$ 12	\$ 12
Terminal Value						\$ 148
Discount Period	0.19	0.89	1.89	2.89	3.89	3.89
Discount Factor @ 8.2% WACC	0.98	0.93	0.86	0.80	0.74	0.74
Discounted Free Cash Flows	\$ 5	\$ 11	\$ 11	\$ 10	\$ 9	\$ 109
PV of Cash Flows	\$ 46					
PV of Terminal Value	109					
Indicated Fair Value before TAB Factor	\$ 155					
Tax Amortization Benefit Factor	1.2x					
Concluded Fair Market Value	\$ 180					

PGR
0.0%

(1) Disclosure Statement dated June 24, 2020, Exhibit B, p. 8 (Docket #541).

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Valuation of the J. Crew IP

Concluded Fair Market Value

As of September 11, 2020, the value of J. Crew's IP, utilizing a 1.1% royalty rate, a WACC of 8.2%, and flat sales, is: \$180 million.

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Faculty

Evan Gourvitz is counsel with Ropes & Gray LLP in New York. As both outside and in-house counsel, he has successfully litigated and counseled clients on intellectual property disputes for more than 25 years. Mr. Gourvitz has handled copyright, trademark, patent, trade secret, false advertising, right of publicity, and name/image/likeness (NIL) disputes, as well as First Amendment and general commercial litigation, in federal and state courts and before the Trademark Trial and Appeal Board and International Trade Commission, for clients in the finance, technology, consumer products, entertainment, publishing, fashion, alcoholic beverage and pharmaceutical industries, among others. He has particular experience with social media, with which he has been involved both personally and professionally for more than 30 years. He regularly advises clients on cutting-edge internet, digital and tech issues, including artificial intelligence (AI), large language models (LLMs) and machine learning; takedown requests and the removal of infringing, libelous and offensive materials from the internet; the use of trademarks and celebrity names and images on social media; dealing with copyright trolls in a cost-effective manner; cybersquatting and cyberfraud; UDRP proceedings to recover infringing domain names; doxing, deepfakes, impersonation and cybersecurity hygiene; cryptocurrency, NFTs, the Metaverse and Web3; social media reputation management; and how to prevent disputes from “going viral.” A recognized thought leader on IP-related topics, Mr. Gourvitz has written for and been quoted in several publications, including *The New York Times*, *World IP Review*, Bloomberg Law and *Law360*, and he has presented in venues including the International Trademark Association Annual Meeting (INTA), the American Intellectual Property Law Association (AIPLA) Annual Conference, the Center for Intellectual Property x Innovation Policy Annual Conference, and the MIT Sloan School of Management, among others. He received his B.A. in political science and English in 1990 with high honors from Rutgers College, his M.A. in politics in 1994 from New York University Graduate School of Arts and Science and his J.D. in 1998 from New York University School of Law.

Richelle Kalnit is chief commercial officer and senior vice president at Hilco Streambank in New York, where she advises companies, lenders and stakeholders on matters related to intangible assets, including brands, software, patent portfolios, digital assets and marketplace accounts, as well as on how artificial intelligence (AI) can impact the utilization of these assets. Her services often take the form of sell-side mandates, to which she brings nearly 20 years of legal and M&A deal experience managing the nuances and unique aspects of the sales of these types of assets. Ms. Kalnit is responsible for developing an unmatched commercially reasonable sale process product under Article 9 of the Uniform Commercial Code for intangible assets. She is a frequent panelist and contributor related to asset sales and intangible assets and how AI may impact the value of intangible assets. Prior to joining Hilco Streambank, Ms. Kalnit was a member of the bankruptcy and restructuring group of Cooley LLP. During her tenure at the firm, she managed M&A transactions for several of the nation’s most prominent retailers, consumer product companies, hotels and restaurants. She began her career at the law firm King & Spalding LLP. Ms. Kalnit received her undergraduate degree *cum laude* from the University of Pennsylvania and her J.D. *cum laude* from the Benjamin N. Cardozo School of Law at Yeshiva University, where she was in the top 10% of her class.

Rafael Klotz is a principal of The Brattle Group in Boston. He is a testifying and consulting expert specializing in bankruptcy, cross-border insolvencies, commercial finance, intellectual property

and contract-related disputes. Mr. Klotz's expertise stems from three decades of managing transactions with both distressed and healthy companies across the retail, commercial, industrial, transportation and technology sectors. He provides expert testimony in litigation and arbitration proceedings, drawing on his experience in U.S. chapter 11 cases, international insolvency proceedings (U.K., Europe, Latin America and Australia), cross-border secured lending, asset investments, divestitures, out-of-court restructurings, and intellectual property development and valuations. Mr. Klotz is a native Spanish speaker and fluent in English and Portuguese. He received his Bachelor's degree from Berklee College of Music and his J.D. from Boston College Law School.

Dr. Israel Shaked is a founder and managing director of The Michel-Shaked Group in Boston, where he provides consulting, valuation, investment, and investment banking services to law firms and companies worldwide on a wide range of issues. He has also acted as a consultant to numerous government agencies, including the Securities Exchange Commission (SEC), the Internal Revenue Service (IRS), the Federal Deposit Insurance Corporation (FDIC), the Department of Labor (DOL), Pension Benefit Guarantee Corporation (PBGC) and the Commonwealth of Massachusetts. Dr. Shaked has delivered hundreds of seminars to senior corporate executives and law firms in North and South America, Europe and Asia, and has testified before the U.S. House of Representatives' Ways and Means Committee on the subjects of leveraged buyouts, acquisitions and taxation. He has been engaged as an expert witness, and has offered testimony at depositions, arbitrations and trials on numerous occasions. Dr. Shaked is a professor of finance and economics at Boston University Questrom School of Business. For almost 40 years, he has taught courses at the graduate and undergraduate levels on various topics, including business valuation, corporate finance and financial economics, and he is a two-time winner of Boston University's Broderick Prize for Excellence in Teaching. Dr. Shaked was the director of the Boston Chartered Financial Analysts (CFA) Examination Review Program for 19 years, and was the co-founder and director of the Institute of Chartered Pension Professionals (ICPP). He is a former ABI Board member and is a contributor to the *ABI Journal*. Prof. Shaked has authored several books and numerous articles, and he appears frequently on television and in the press commenting on contemporary financial and business issues. His academic and professional research covers such areas as investment analysts, valuation, financial distress, solvency, preferences, fraudulent conveyance, bankruptcy, LBOs, international business, mergers and acquisitions, economics, corporate structure analysis, corporate financial decisions and capital markets. Dr. Shaked has also authored or co-authored numerous articles and several books, including *A Practical Guide to Bankruptcy Valuation, Second Edition* (ABI 2016). He has delivered hundreds of seminars to corporate executives and law firms globally, and has been engaged as an expert witness offering testimony at depositions, arbitrations and trials on numerous cases. He is renowned and relied on for his expertise in valuation matters, and his ability to explain the complexities of valuation clearly to a judge, jury, arbitrator or regulatory authority. Dr. Shaked received his B.A. in economics and his B.A. in statistics from the Hebrew University of Jerusalem, his M.B.A. with a concentration in finance from the Hebrew University of Jerusalem, and his Doctor of Business Administration (D.B.A.) from Harvard Business School.

George Wukoson is general counsel of Ziff Davis's Health & Wellness division, the Everyday Health Group, in New York, where he manages the legal function and provides strategic counsel to support its portfolio of data- and analytics-driven digital media and services businesses. He has led the company's participation in bankruptcy sales and transactions and strategic partnerships involving first- and third-party digital assets, data licensing and artificial intelligence. In addition to his role at

Everyday Health Group, Mr. Wukoson serves as Ziff Davis' lead attorney on AI matters, overseeing AI governance initiatives and advising cross-functional leadership on legal and regulatory considerations related to artificial intelligence. He has written and spoken on such topics as the use of commercial web content in large language model training and the impact of frontier copyright litigation on web publishing. Prior to joining Ziff Davis, Mr. Wukoson was a litigator and counselor at Davis Wright Tremaine LLP, where he advised media and technology clients on intellectual property matters. He began his career at Dechert LLP. Mr. Wukoson received his B.A. in comparative literature from Dartmouth College and his J.D. from New York University School of Law.