



CROWDFUNDING?

STEVEN BENTO^{*}
ROBIC, LLP
LAWYERS, PATENT AND TRADE-MARK AGENTS

In 2013 alone, the Internet phenomenon known as "collective financing", "social fundraising" or "crowdfunding" generated over 5 billion dollars in donations worldwide.

The Kickstarter platform alone raised over 24 million dollars in Canada [<http://www.theglobeandmail.com/report-on-business/small-business/sb-money/business-funding/high-tech-bike-is-kickstarter-canadas-most-funded-project-of-the-year/article20510125/>]. The data for 2014 has not yet been compiled, but judging from the success of large scale projects such as Coolest Cooler and Oculus VR, as well as media coverage of the phenomenon, crowdfunding does not seem to have slowed down yet [<https://www.kickstarter.com/projects/ryangrepper/coolest-cooler-21st-century-cooler-thats-actually>;<https://www.oculus.com/company/>].

This article is one in a series of three that will focus on Crowdfunding which is increasing at an exponential rate.

The Beginnings

What started as a tool to finance innovative projects has its roots in the traditional model of artistic philanthropy, where artists appealed directly to their target audience to finance their work [<http://www.theatlantic.com/technology/archive/2013/06/kickstarters-of-yore-mozart-lady-liberty-alexander-pope/277389/>]. Previously limited to artistic or socially minded projects, crowdfunding has become simply another type of fundraising for projects of all kinds. This new system is very promising, as it allows more democratic access to equity, and will benefit from regulations proposed by various provincial organizations that govern financial markets. The United States shares Canada's enthusiasm for crowdfunding. The various measures taken over the last few years through the "Jumpstart Our Business Startups Act" bear witness to the popularity of this concept [4Jumpstart Our Business Startups Act 15 U.S.C. § 78a].

© CIPS, 2015.

^{*} From ROBIC, LLP, a multidisciplinary firm of Lawyers, and Patent and Trade-mark Agents. Published in the Winter 2015 (Vol. 18, no. 3) Newsletter of the firm. Publication 068.186E.

ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

QUEBEC
2828 Laurier Boulevard, Tower 1, Suite 925
Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006

What is Crowdfunding?

Crowdfunding consists of collecting small amounts of money from a large number of online investors [<http://www.theglobeandmail.com/report-on-business/small-business/sb-money/business-funding/high-tech-bike-is-kickstarter-canadas-most-funded-project-of-the-year/article20510125/>] It is different from traditional fundraising methods in that it involves a web-based portal. It therefore takes advantage of the Internet's broad reach, and results in many small financial transactions. The investor profile is younger than before (20-35 years old, rather than 48-59), and differs from that of traditional investors. As such, crowdfunding is of particular interest for businesses that are just starting out, which often face difficulties when approaching traditional investors.

Types of Crowdfunding

There are three types of crowdfunding. "Pledge" crowdfunding (i.e. donation) is generally permitted in Québec if current legal and fiscal regulations are followed. "Donation and reward" crowdfunding (i.e. donation in return for a product) is also permitted, with similar restrictions. Finally, "equity" crowdfunding allows the exchange of stock using shareholder equity or other securities with an RSI or ROI. This last type of financing is about to become regulated by several organizations, such as draft regulation 45-108 respecting crowdfunding in Québec.

Legal Aspects

Canadian law is not as up to date as U.S. law with respect to crowdfunding. The Canadian laws that relate to fundraising were drafted before the crowdfunding phenomenon came into being. There is therefore no centralized organization, such as the Security Exchanges Commission in the US, authorized to legislate in this matter in Canada. Crowdfunding faces two major challenges in Canada: the division of power between the federal and provisional governments, and the dual objectives of current legislation with regard to business financing (the Consumer Protection law and laws facilitating economic exchanges). In Quebec, draft regulation 45-108 respecting crowdfunding, not yet in force, proposes to identify rights and obligations with regard to crowdfunding, and appears to propose similar obligations as those currently proposed in Ontario [<http://www.lautorite.qc.ca/files//pdf/reglementation/valeurs-mobilieres/45-108/2014-03-20/2014mars20-45-108-cons-fr.pdf>; http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20140320_45-106_rfc-prospectus-exemptions.].

Where Does Intellectual Property Fit into All This?

Since most projects are posted on public crowdfunding platforms before a “proof of concept” has been carried out, it is rare that intellectual property is protected at that point. A public disclosure of the invention made by an inventor more than one year prior to the filing of a patent application in Canada would also have the adverse effect of eliminating the patentability of the invention in Canada. By sharing their ideas, projects and concepts online, often at a very early stage of development, those who turn to crowdfunding run the risk of having a competitor steal their most important resource at that stage: their intellectual property.

This issue as well as the one about the upcoming legislation will both be the topics of distinct articles in the coming editions of the ROBIC newsletter.



ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

QUEBEC
2828 Laurier Boulevard, Tower 1, Suite 925
Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006

ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

QUEBEC
2828 Laurier Boulevard, Tower 1, Suite 925
Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006

ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

QUEBEC
2828 Laurier Boulevard, Tower 1, Suite 925
Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006

ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

QUEBEC
2828 Laurier Boulevard, Tower 1, Suite 925
Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006