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Intellectual property and copying: the attitudes of creatives

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Abstract

This paper examines the understanding and perception of micro and SME games developers and fashion and textile designers of intellectual property (IP) and its enforcement. Through the lens of the economization literature, it argues that far from property being understood as the consequence of a process of disentanglement that economic and legal theory espouses, creatives view their IP as being protected through being entangled in knowledgeable communities of producers and consumers. This experience of entanglement provides an experiential foundation that takes the place of the legal function of IP.

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1. Introduction

This paper explores the attitudes of creatives to intellectual property from the lens of the economization literature (Calişkan and Callon, 2009, 2010; Callon, 1998). Seeing the economy ‘as an achievement rather than a starting point’, economization interrogates the economic, examining the ‘processes through which activities, behaviors and spheres or fields are established as being economic’ (Calişkan and Callon, 2009, p.370). Its focus is ‘economics at large’, ‘the array of knowledge and the know-how on markets that non-academic agents elaborate and employ’ (Callon, 2007, p.5). An important element of economic or market activity is ‘property’. ‘Markets’ require ‘objects’ to be transferred as property. ‘Goods’ are valued, circulated and transferred between agents in exchange, in other words, alienated. However, just as ‘the economic’ is achieved through actions, devices, procedures, so ‘property’ relies on practices and processes by which something becomes labeled as such. Property, in other words, does not come ‘ready-made’. It is achieved through a variety of mechanisms that attach the label ‘property’ to things and secures the behaviors and activities that emanate from this.

This paper examines how those who produce creative goods come to recognize, identify and label that which they produce as being intellectual property (IP). Control of IP is important for the creative and cultural sector, in particular for micro and SMEs which constitute the majority of the sector, as many are forced to give up control of IP, and thereby future income, in order to secure funding or access to markets (Hargreaves, 2011). SME and micro often neglect IP given the constraints of establishing a business often with limited resources. The empirical material is drawn from interviews with twenty-six creatives, fourteen from fashion and textile designers (10 sole traders, 2 with under 5 employees, 2 with 8-10 employees) and twelve from the games industry (3 sole traders, 5 with fewer than 5 employees, 4 between 25-35 employees). The interviews are designed to investigate how creators understand their IP and consequently how they manage it. Both fashion and games are identified as economically important areas and both also face IP challenges with the impact of digital (Cox, 2005; Gibson and Gibson, 2008; DCMS, 2009). They present, however, different ends of the commercial spectrum, with fashion and textile design, especially at the micro/SME level, bearing a greater resemblance to craft, while games is much more commercially focused. After giving a brief overview of the economization literature and how it might augment our understanding of IP, the paper presents the differences and similarities in designers’ and developers’ understandings of, and attitudes to, IP.

2. IP and market activity

Markets are characterized by circulation and exchange as objects are transferred from one agent and tied to another. This is achieved through property relations, i.e., objects must be attached to property rights so that they may be transferred. Property rights ‘define the right to use certain assets to devise an income from them and to sell them or transfer them to a third party’ (Callon, 1998, p.21). The question from the perspective of economization is how these relations become established and understood in practice by ‘lay’ personnel, i.e., creatives who primarily want to design or make games.

Property rights are thus the foundation of a functioning market. Indeed, Calişkan and Callon (2010, p.5) identify markets as ‘socio-technical arrangements that organize the conception, production and circulation of goods as well as the transfer of property rights attached to them’. But what is entailed in establishing property rights? The process is twofold, first,

entities become 'goods', i.e., 'passive objects', objectified and detachable (Callon and Muniesa, 2005); second, goods must become 'attached' to property rights. Calışkan and Callon (2010, p.5) refer to the pacification of goods as 'objectification work', i.e., the transformation of 'objects' or 'things' into 'goods', by detaching or disentangling them from their network of connections. As with any entity, each creative object is entangled in a network of relations, linked to the creator who creates it and the community or the tradition with which it engages. A piece of textile is attached to the source of the yarns chosen to weave it; the setting of the loom; the skill and aesthetic sensibilities of the weaver; the patterns used in its design, etc.. Pacification involves detaching the 'textile' from this entanglement such that it may be abstracted to become a good for circulation and exchange. As Slater (2002, p.238) amplifies, 'There is the presumption of individual objects that can be materially and conceptually disentangled for their contexts as discrete and transactionable things, items passed from one context to another as property'. Economic arrangements disembled or abstract things from their prior context, from one set of agencements where, for example, the aesthetic or creative aspects may have primary significance, to embed them within another, more calculative, space.

'Abstraction', however, is 'an action not an adjective' (Callon et al., 2007, p.4). It is a process of disentangling and (re)framing. The form of disentanglement or reframing is disputed in the economization literature. For Callon and Muniesa (2005) it entails goods being placed in a calculative space to be compared with others. As one stage on the route of commoditization, pacification is a process of homogenization, the reduction of an object's value into an economic monetizable form. Callon (1999, p.189) writes 'to turn something into a commodity it is necessary to cut the ties between this thing and other objects and human beings. It must be decontextualized, dissociated and detached.' Slater (2002) questions the 'disentanglement' advocated by Callon, and prophesized by economic formalism, and sees social relationships formed around transactions become subject to instrumental rationality. The form of exchange 'does not mean that objects and people become formal and abstract as in homo economicus but it does mean that their substantive nature, their embeddedness or entangledness becomes the object of instrumental calculation rather than of entanglement' (Slater 2002, p.240). Note that what is being identified here is a process, rather than an all-or-none 'state of being' (Kopytoff, 1986). The focus of attention, as Slater (2002, p.235) argues, should be on the processes of abstraction, 'the real abstraction of economic processes'.

IP law facilitates the process of abstraction; providing abstract terms to constitute a 'thing' as an alienable property. Described as a 'legally regulated, artificially created monopoly over intangible objects of communication' (George, 2012, p.6), it comes in the form of copyright (arising automatically with the documented expression of the ideational object), patent (propertizes novel invention), design (propertizes the appearance of a product) and trademark (a graphical representation, a sign capable of distinguishing goods, requiring registration).

In her discussion of IP, George (2012, p.92) makes the distinction between ideational objects, their documented form, and the IP object constructed through the IP law. IP relies on a number of conceptual legal constructs to function, including 'creatorship' (i.e., an identifiable 'author', inventor or creator), and 'originality'. Original work (copyright), novel invention (patents) or design (registered or unregistered design rights), or a dissimilar sign (trademark), refers to the documented form rather than the ideational object. IP law does not confer rights over ideas, only the temporary monopoly of the expression of those ideas. If there is the communication of the same 'ideational object' this must not be in a form that copies earlier work. The 'intellectual propertyness' (George, 2012, p.18) of the 'ideational object' is

evidenced by a documented form, and compliance with the requisite legal understandings of creatorship and originality. The legal framework affords the holder of IP rights (who may not be the creator) the monopoly privilege to ownership and exploitation, including the right to exclude. These are 'economic' rights. Although IP is defined in terms of property, its 'theft' comes not from depriving others of it, but the loss of being able to exploit monopoly rights attaching to it. As a form of 'property', it carries misleading connotations, not least its association with a tangible product or entity. The use and understanding of the terms is, as George (2012) notes, as though IP is something that has existence prior to, and independent of, the law.

The function of IP, from a Lockean perspective, is to 'reward' creative mental labor with property rights, akin to a labor theory of value. Ownership of that which is created is by 'natural right'; rights reflect the expenditure of labor, effort or capital. Another rights perspective, informed by Hegel, derives from the person of the creator, hence sometimes termed the 'personality theory' of rights, in that created work represents an expression of self, the denial of which would be a form of alienation. This perspective informs the moral rights doctrine that grants the right of attribution, and to object to the derogatory use of a work even after sale. Non-rights based justifications of IP refer to its economic function. Here, IP is an incentive to create and to counter free-riding, on the basis that 'people are unlikely to invest labor, effort or money and other resources into producing ideational objects and their documented forms' without recompense (George, 2012, p.345). The construction of the agent as rational economic calculator is implicit in such an understanding. Policy positions often subscribe to the economic justification for IP. The monopoly right to exploit non-excludable and non-rival 'public goods' 'corrects' the market and thus compensates for market failure (George, 2012).

Although George (2012, p.236) sees IP law as 'fundamentally an institution that provides for the conversion of ideational objects into private property through the application of a series of conceptual requirements', the framework of economization allows us to supplement this understanding in order to interrogate the processes through which 'lay' agents construct their understanding or perception of, and relationship to, intellectual property, and the extent to which they view 'property' as having 'economic' salience. Is the process of abstraction pertinent to lay agents understanding of property rights? If so, what is involved in this process? Following is an examination of the process of the extent to which, and how, objects are characterized and understood as being intellectual property.

3. The value of IP

When asking creatives about IP, all reported knowing about it and being aware of its importance, 'in principle'. For some micro games companies its significance is obvious: 'Once you have your own IP you can actually add value to the company' (Games 43). For others, the importance lay in being able to develop IP without the need for compromise, as highlighted by Hargreaves (2011): 'I think the difficulty is having enough time and resources to fully develop our IP in a kind of safe environment without someone interfering or buying into it already and then changing it. So we are trying to protect it and be independent as long as we can' (Games 44). The dilemma for games developers comes when facing publishers: 'A lot of the time, publishers will give you a better deal initially. If you hand over IP ownership, they will give you a greater revenue share. So it is balancing the short-term and

long-term. Sometimes it is just better to sign it over completely to get the bulk payment so that you can then get to work on something else, and sometimes it is not' (Games 43).

In fashion and textiles, however, when asked about IP, the response often reflects not a legalistic understanding of rights and the protection of value, but an intuitive understanding of the 'personality theory' of a rights based approach to IP. For example, one textile designer, replied: 'I would say that it is me, because I am at the hub of everything...That is all part of my story-telling, that is all part of my UPS [sic] if you like. It's about me, it's about my Intellectual whatever...Your main IP, it is your concept, which comes from your own experiences and yourself and it is communicated through what you use...It is part of who I am and how I operate (Designer 27). In other words, there is no separation between producer and product.

Although there is an understanding of IP 'in theory', there is often a confusion in practice as to what it means and how to go about protecting it, although again there are exceptions as the following sole gamer demonstrates: 'To me you have to secure it, especially if you are doing something unique, you have to secure that as best you possibly can. Intellectual Property is simple things such as your copyright, your trademarks, design patents, your normal patents' (Games 41). For many, however, there is confusion over what precisely is being protected: 'Are you trying to protect the code base itself or the result that it generates? As there are thousands of different ways to do the same thing' (Games 43). There is also the view that it is difficult to protect IP in games: 'Unless you have a really clever bit of tech then you cannot really protect it. And if you have a really good, clever bit of tech, generally your game sucks because you spend more time worrying about the tech than you do worrying about the game' (Games 46).

Others see a difference between the IP of the brand and the IP of the technology, stating: 'They [publishers] can have the brand. They can have the game. As long as we can retain the technology so that we can use it to make other games. The tech is really what we are building on. It is what makes us better with every game we are developing' (Games 43). For others too, this distinction is also important 'IP isn't just about our games, IP is much more around like re-usable components and how we can move faster using those re-usable components' (Games 46). What is emphasized here is the technical know-how that can be used in future developments.

Designers also thought it was difficult to protect a product, as one explains, describing the finish on a particular garment: 'We have never thought about protecting it really. I don't know how you would go about protecting a finish, you know. But it is like a recipe that we have come up with. The stitches are slightly blurred. It has got a raised pile and it is windproof. So we have given it a soft finish as well because the fibers are burst more' (Designer 33). For others, their work involves working within a tradition, 'I think it is very difficult to register a design right actually. I think it is quite complex, because we are working with traditional stitches a lot of the time anyway. Although we do invent stuff...we do it all the time, actually, inventing new ways of doing things'. It is this innovation that is seen as the IP of the company. IP is understood intuitively, rather than legalistically. What is being described are intellectual assets, the in-house 'know-how' that comes from working in an area for a long time. This is equally true for games companies, where IP is understood as: 'the things that we could re-use like, for example, the techniques we learned or some other things. But as far as the codes are concerned, they are not really things that can be copyrighted generally speaking' (Games 44).

Also reported is lack of knowledge about the process and concerns with costs. Cost is an issue, not necessarily the cost in registering in the UK, but registering in all markets the seller is likely to be engaged in, as one designer describes in relation to securing copyright in the States: ‘The thing is that I would not be able to. I believe it is quite an expensive thing to do, to copyright. I could not afford to do that’ (Designer 37). Again there are exceptions. One micro game company relates how they protected their IP from a very early stage, which later enabled them to approach large, multinational corporations to licensing their products. Although initial costs were deemed prohibitive, in this case this designer was able to navigate the process of protection with the aid of the IPO and researching online: ‘the prices that we were quoted. You are upwards of £10,000, your quotes from legal firms. I know some people who have spent £40,000 to do stuff that I did myself for £500’ (Games 41). The payoff was later obvious, ‘For me it is the single biggest thing, we have only spent a matter of a few hundred pounds protecting what we had; to theoretically go on to negotiations for a price of upwards of £50 Million’ [a reference to a possible buyout] (Games 41).

For others, it’s an issue of time, ‘We don’t think about that [IP issues] too much because we are too busy preparing for the next order’ (Designer 36). This is something that faces start-ups generally: ‘it is something that we should do but it is just cost and it takes time. Really if you are going to protect something at what point do you start protecting it? Because there are so many different markets...’ (Games 44). Interestingly, in games there is the distinction between IP and intellectual capital: ‘I think trademarking is interesting in that there is really no point in doing international trademarks until you have got some semblance of success’ (Games 42). In other words, IP is only recognized when it is ‘proven’ to have value in the market. As George (2012) notes, legal status is considered only when value is recognized. As one SME designer explains: ‘You might come up with a game and spend a year making it, and it flops, and so there is no value in the IP. Or it does an Angry Bird’s, and there is massive value in the IP. So it is like the lottery, I mean, the chances of succeeding are very, very small.’ (Games 42). This designer explains the general view that ‘it is probably a waste of money until the point that you have got some semblance of success. Even if you hire someone to go and do [IP searches], there is someone, somewhere, probably that is going to have something similar that they could moan about. So you do good housekeeping. No-one is going to care less if it is a complete flop, so if you are going to spend £5k or something trademarking it globally, even in Europe, the UK and the US, then that is £5k wasted if the game does not do well. I think it is really one of timing’ (Games 42).

So far, the responses from creatives in terms the lack of knowledge of the area, the process involved and concerns with cost, are familiar (Hargreaves, 2011). In order to understand these attitudes more fully, however, it is useful to examine the stages identified in the economization literature in the creation of property, i.e., the disentanglement of goods and their attachment to property rights, as this, we argue, allows us to explicate the rationale for these views more clearly. Following, we examine how creatives view the object they have created and the extent to which it is perceived as a ‘passive good’.

4. Pacifying objects

For many the concept of ‘authorship’, one of the foundations of property, is problematic. Most respondents see themselves as being part of a community or in the case of weaving or knitting, part of a tradition, an on-going practice, ‘I know that I have maybe been inspired by

other people in the past and I know that plenty of students' work that I have seen since has been inspired by me and other designers and that does not bother me.' (Designer 32). This is especially the case for those who supplement their activity by teaching, 'because of the teaching, I am very open to tell people how things are done and maybe that is my problem. You know a magician never tells how his tricks are done, but I am quite open to say' (Designer 27). The moral obligation to the craft, of handing down aspects of knowledge and tradition, is strong, as this designer explains: 'It is about kind of progressing the sector as well, you know, making the sector progress. If I kind of had all this knowledge and information that I have developed myself and held on to it, the whole sector would just become defunct very quickly...If everybody that is a maker or a painter or a designer does not pass on that knowledge base, it very quickly becomes dead, null and void' (Designer 27).

Being part of a community also influences attitudes to copying. As McRobbie (2014) notes, copying is endemic to fashion, part of the pedagogy of how those in it learn their craft as designers and makers. In this sense, copying is a form of 'dialogue between the past and the present' (George, 2012, p.228). A designer, whose work had been copied, explains: 'The question was put to me, "Do you buy other textiles?" and I was like, "Yes". And then I was asked "Well, what do you do with it?" and I said "Well, I have them in my studio. I look at them. I wear them. I look at them in terms of an aesthetic point of view, from a structural point of view, from a price point of view". And then they said, "So how does that filter down into your work?" And I thought, "Well that is a good question" Because maybe subconsciously, well I have been influenced by the pieces that I have bought, it is not a deliberate thing' (Designer 27). In this sense, both those in design and in games questioned that anything is 'new', 'Everyone borrows from everyone right. So it is like the music industry, I mean is there any real true originality? There kind of is, but it tends to be an amalgamation of other things and to sort of say that we came up with this and it is truly original, it is like, well, that is absolute nonsense' (Games 42). 'Original' designs might also be spontaneously viral or memetic (George, 2012).

Being part of a community or tradition, and necessarily influenced by this, does not prohibit the distinction being drawn between influence and direct copying, 'I think people who take ideas from others, or copy, ideas are fine. Obviously you are influenced by whoever teaches you, but to literally copy something...' (Designer 36). Informed by a personality theory of property, however, copying or stealing reflects a deficiency in the copier, not a theft of property. The attitude is one of almost pity: 'They don't get far with it. They might put up one piece but then, what is next? Where do they go from there?' (Designer 36). 'You have to come up with the ideas for them to be developed' (Designer 32). The design, in other words, is not just the product but encompasses all that went into its making. The problem of disentangling the self from the creative process is also apparent in games: 'I think it depends on how you as the developer value your IP. For example, looking at [X game]. Back when we started it was obviously our baby. That was the first thing we ever did and it was great and nobody wanted to give the IP away' (Games 43). However, they continue, 'now after having seen how it does and that we do need help, I am, and I think the rest of us as well, are more comfortable with just assigning part of the IP away. We get less precious with experience' (Games 43). The introduction of a more calculative understanding of their 'product' has been created.

The first step in the process of securing IP, pacifying objects, is for some creatives, particularly in fashion and textiles, something that is difficult to achieve conceptually. Adherence to a rights-based personality concept of IP, and seeing the work as part of a

community or a tradition, limits the prospects of pacifying objects. The next stage to examine is the process that of attaching objects to property rights.

5. Attaching objects to property rights

The attachment of objects to property rights involves several stages. The first relates to knowledge of copying. For games, this relies on close inspection of other products on the market, ‘the client we worked with on the medial education apps is keeping a fairly close eye on the app store to make sure that no-one infringes upon his copyright. Because he created all the medical content that went into the app’ (Games 43). Within fashion and textiles it is more difficult: ‘when you are on your own and you are a smaller business it is difficult to keep track yourself’ [of potential copying] (Designer 39). Very often there is reliance on colleagues, ‘I went to this exhibition and I saw this body of work and I thought, “Oh my God, that looks like so and so’s work”; I thought “That is brilliant that she has got an exhibition here” and then I looked at the name and it was someone completely different. I phoned up this person and said, “Are you aware that so and so has copied your work?”, and she was going, “Oh God yes, everybody has been telling me about it”’ (Designer 27).

As George (2012) notes, an essential element of IP is the existence of the documented form. Having documentation is essential to prove copying. Again it is something micro fashion and textile designers find challenging: ‘I do document my work but only on a basic level. I have never done anything like sending the designs to myself [an oft-cited belief that this protects designs]’ (Designer 31). It is easier in the production of a collection, ‘When I am producing a collection there is usually documentation of research drawings, my initial ideas, then the development and then the outcome into the design work and then they are photographed and documented as a collection and it is usually dated’ (Designer 35). For games, documentation is inherent in working practices, ‘In terms of the actual game code, there are obviously copyright messages and stuff in there. It is making sure it is dated, and making sure that it is backed up properly and all the rest, so it is properly documented. I think with the art stuff, again everything is backed up on to a server. It is dated. It is documented, so we have got proof of ownership that we actually have the design rights and all the rest of it, the documentation again is just making sure that the copyright message is on there and everything else’ (Games 42). Interestingly, documentation is seen as much a protection against accusations of copying, as a protection in its own right.

Having documentation, however, is not sufficient to be able to prove that copying, rather than exact reproduction, has taken place: ‘With knitwear you can change a few things. I think the hard thing really is to identify in what way your garment has been reproduced and copied’ (Designer 30). A designer explains: ‘They [large High Street store] copied a glove and a scarf and it was stitch for stitch identical apart from we used eight colors and they used six. But apart from that they did not even change the colors. It was very similar, but unfortunately we still did not win.’ (Designer 33). In games, also it is difficult to identify what is being copied, ‘I think the difficulty at the moment is how you differentiate between a game play mechanic and a technical mechanic...The problem that you have when you are actually trying to enforce patents on technology, as in on code, is really finding and then proving that they are actually using part of your code base that you have had the rights for’ (Games 43).

These comments point to another difficulty in attaching objects to property rights, that of enforcement. Property rights are rights *in rem*, i.e., they depend on the proprietors’ ability to

take action in court. As a fashion designer explains, ‘the problems are not your IP. The problem is actually, if there is a case to be brought, actually funding, proving your IP. My IP is evident. It is there. I have Intellectual Property rights in everything that I do. I have no problem proving my IP. Everything that I do is recorded. The techniques are very specific. We have our own brand identity. The problem is actually in taking it to Court. You can put as much in place and pay as much money as you wanted to protect yourself, but that will do nothing if you cannot afford to then enforce it’ (Designer 31).

Taking legal action is seen as especially difficult against big companies: ‘If we come up with a product which is something that might appeal to a High Street company, we are very vulnerable, especially if it is done abroad. Somebody abroad takes a shine to one of our garments and starts to refine it – especially if they mass produce it – then it would be very, very difficult’ (Designer 30). This is also the case where IP protection is in place: ‘It is very scary when you are talking to them [global entertainment brand], especially at the start where you are giving away all your ideas, even under non-disclosure, because you would not have the money to sue them and the same goes for a lot of companies out there. Even if somebody did it...and I suppose this is one of the things about IP...if somebody did copy you or design around something you are doing, which is very possible, you are probably not going to be able to do much about it’ (Games 41). Essentially the decision is a cost benefit analysis: ‘To be able to enforce the protection in all the states and regions that we would be selling it to, it would probably just be a commercial decision... We can enforce it and it is going to cost £xx or we are going to lose £xx amount of value in whatever it is we are losing and see which one is cheaper, quite frankly’ (Games 49).

6. Valuing IP: rationalizing copying

The inability to enforce claims prompts a re-evaluation of value. The value transferred in ‘copying’ is not registered as economic, i.e., a loss, but rather becomes the reflection of a ‘higher’ form of value, a form of emulation or ‘flattery’. A designer, whose work was copied by an organization with whom he was working abroad, explains: ‘I spoke to [a number of other designers] about it and they were saying, “Well, you know, it could go two ways. You could be really pissed off and do something about it, or you could do nothing about it and feel flattered”’ (Designer 27). Those in games also reflect this view: ‘We have some anecdotal evidence of people looking at some of our projects and making versions of them. And it is actually kind of cool.’ (Games 47). The issue becomes not being copied but having the reputation, as one games designer explains: ‘Ultimately if you release something good you are going to get copied. But it is doing it in such a way that you are known for that innovation or that mechanic or whatever first’ (Games 44).

There is also a belief that the product will not be produced to as high a quality, but, more importantly, will not have the authenticity that ensures genuine value: ‘I think in the fashion industry especially it is very difficult to have IP and protect it. I think it is very, very difficult...and there is not really much you can do...I think [its] having the confidence and even arrogance that if the ideas I am producing are my ideas that no-one else can produce them to the same standard that I can...if somebody does copy you, it is not going to be as good as yours and they are not going to have the back story behind your work.’ (Designer 32). It is a view echoed by other designers, ‘If you are developing your design work and you are the maker, you know the provenance of it. You know exactly where it has come from and, to a degree, it is a form of flattery if somebody is copying your work’ (Designer 34).

The inalienability of individual creativity becomes the basis for securing IP, as it is understood, as a designer explains: ‘We have always found the whole area of Intellectual Property absolutely... I think it is a densely complicated and difficult thing... We are very much a small design business. We depend on our design to keep it going and we depend on being able to keep it fresh, and unusual and different’ (Designer 30). This is a view echoed by others: ‘You have to keep a step ahead anyway, so that is what a good, healthy designer will be doing most of the time’ (Designer 34). Protection comes from creativity and the intellectual know-how that is inherent in experience and work processes: ‘I think it is about building a team and it is about building the expertise inside that team. So that whether someone does clone a game of ours, that we could come up with something better and constantly improve. Someone can clone your idea but no-one can clone the thinking and expertise behind that’ (Games 46). The importance of uniqueness and the ‘nobody knows’ nature of creative products is seen as ensuring competitive advantage and success (Caves, 2000).

Also important is being embedded within a community or group, not only of producers but perhaps more significantly, users and consumers. A fashion designer explains: ‘You [can] tell... somebody’s design. You [can] tell by the yarn size, by their color choices, by the shapes of garments that they [make], what sort of textured fabric they [are] working with and what sort of finish and production methods they [use]. So all of those [combine] to create a signature in knitwear design which [is] very, very distinctive and very, very obvious, not just to those of us who [are] in the know but to the public’ (Designer 30). The development of aesthetic eye (Bourdieu, 1993) is fundamental to acknowledging the value of the creation: ‘People tend to recognize the handwriting of your work. People can spot it ... It is just like you would recognize Paul Smith’s stripes and somebody else that did stripes. They are different’ (Designer 35). It is this signature that proves resistant to copying: ‘A Fair Isle jumper is an absolute classic and everybody around the world is making Fair Isle jumpers. But when something is hand made, and made in Scotland, and made out of pure yarns, and given a particularly beautiful color, then that is an almost uncopyable kind of your thing because of all those features. We are in that sort of area where that tends to be our protection. You know, if it is made out of very particular yarns which are very difficult to get a hold of, and there is a tremendous amount of handwork that goes into it. You have got certain built in advantages of uniqueness’ (Designer 30). Designers depend on a community of knowledgeable consumers to ‘protect’ their creations.

Game development is also embedded within a community, ‘The best way for us to actually get a gauge [a game] is to get people to play our games and see if they engage with the product. So far we have actually shown ‘[X]’ off at two big events; at [A] last year, which was visited by 10,000 people. We generally had great feedback to our games and, in fact just last month at [B], we showed ‘[Y]’ for the first time to anyone. Because obviously we think our games are good, but you never really know’ (Games 45). A client base is essential for current and future releases: ‘With our other game, it is a case of trying to build an audience now, and once it is at a stage where we need more testers, we are going to just get people to test it through forums etc., and just slowly build up a core of users who are really interested, and use them, essentially, to help us promote the game’ (Games 45).

Thus for micro organizations and SMEs, value and protection lies in being entangled: ‘There are big companies out there whose business model is basically to copy. You have got your [X]’s, and their whole business model is to copy whatever is going on. If there are big

corporations out there and their job is just to take the best of what they see, then you have got no fighting chance really. So the best thing that you can do is connect with your audience first, through social media and marketing and use that to your advantage' (Games 44). Being embedded in a community of users ensures that what is created is associated with the company involved, i.e., attaching objects to property rights is achieved through being embedded in, and having a reputation within, a community: 'My attitude with IP stuff has, from the beginning, has always been it is way too expensive and impractical to actually legally protect anything. And the only practical way of protecting what you make is to just be really public about it. Just make sure that every product you do is 100% associated with you' (Games 47). The use of social media is identified as crucial: 'Being a start-up and basically trying to do things on the cheap as much as possible...Because we have no money, part of it is actually getting to market first and talking about your product first online and just getting it out there. If you have got a website, it is free. If you speak about your own products over Twitter and Facebook, then that has kind of identified something as yours to a certain extent' (Games 44).

The final stage of attaching objects to property rights, i.e., through enforcement, is also achieved through social media. Indeed, social media is identified as an effective enforcement mechanism, 'There is a big community within games, especially with end developers just now. Obviously if you make it known that someone has ripped off one of your ideas, then the development community may turn against them. Hard core gamers may turn against them. With the internet and social networks as they are at the moment, creating a storm is relatively easy, at least compared to what it used to be. If you get the right people that have enough followers then they will fight for your cause as well' (Games 43). They provide an example of a small company's response in such a situation: 'They just did an open letter to [X] saying how happy they were that [X] were so inspired by their game that they decided to go and make a version of it. And then they kind of highlighted the little things, like "from this company, all four of us, to [X] all 4,700 of you"' (Games 43).

7. Conclusion

Markets rely on a process of abstraction, a degree of disentanglement, or reframing of products, such that they become alienable. Having abstracted an entity from its context it may then be labeled property and transferred through exchange. Law also plays a role in this abstraction, constructing a legal entity and attaching property rights to it. Such is the foundation of economic and legal theory. Practice is different. Creatives are resistant to these conceptualizations. For micro organizations and SMEs, IP law is something of an irrelevance: too complicated, too costly and ultimately unenforceable. This is not to say, however, that a concept of IP does not pertain, nor that there is not some sense of protection. It is just that this is not seen in legal terms, and the processes identified in the economization literature allow us to understand this reasoning in more detail. Far from relying on disentangling, personality theories of IP reinforce a sense of attachment between producer and product. Far from goods being alienable and pacified, they are seen as inalienable. And it is this that provides a concept of protection, ensuring that goods have a unique signature and ensuring future creativity. Protection also comes from being entangled within a knowledgeable community, those with an aesthetic eye or a community of users. Attaching goods to property claims also comes through the community. Knowledgeable producers and consumers recognize ownership. Proof lies in the knowledge of the collective, not in documentation. Enforcement also lies in the community with both fashion and textile designers and game developers

making use of social media to publicize infringements. ‘Actors and objects come to the transaction steeped in meaning’ and they remain connected with networks ‘outside the economic frame’ (Slater, 2002, pp.241-242). It is this that is used to inform understandings of economic and legal forms and the ongoing production of norms for their interpretation.

References

- Bourdieu, P. (1993) *The Field of Cultural Production: Essays on Art and Literature*. Columbia University Press.
- Çalışkan, K. and Callon, M. (2009) Economization, Part 1: Shifting Attention From the Economy Towards Processes of Economization. *Economy and Society*, 38(3), pp. 369-98.
- Çalışkan, K. and Callon, M. (2010) Economization, Part 2: A Research Programme for the Study of Markets. *Economy and Society*, 39(1), pp. 1-32.
- Callon, M. (1998) *The Laws of the Markets*. Oxford; Malden, MA: Blackwell Publishers.
- Callon, M. (1999) Actor-network Theory: The Market Test. In: *Actor Network Theory and After*. Oxford: Blackwell Publishers.
- Callon, M. and Muniesa, F. (2005) Peripheral Vision Economic Markets As Calculative Collective Devices. *Organization studies*, 26(8), pp. 1229-50.
- Callon, M., Millo, Y. & Muniesa, F. (2007) *Market Devices*. Malden, MA: Blackwell Publishing.
- Caves, R.E. (2000) *Creative Industries: Contracts Between Art and Commerce*. Harvard University Press.
- Cox, G. (2005) *Review of Creativity in Business: Building on the UK's Strengths*. London. Department for Culture, Media and Sport (DCMS) & Department for Business, Innovation and Skills (DBIS). (2009) *Digital Britain*. London:HMSO (Final Report).
- Hargreaves, I. (2011) *Digital Opportunity: A Review of IP and Growth*. London: HMSO.
- George, A. (2012) *Constructing Intellectual Property*. Cambridge/New York: Cambridge University Press
- Gibson, R. & Gibson. (2008) *Raise the Game: The Competitiveness of the UK's Games Development Sector and the Impact of Governmental Support in Other Countries*. London: NESTA.
- Kopytoff, I. (1986) The Cultural Biography of Things: Commoditization As Process. In: *The Social Life of Things: Commodities in Cultural Perspective*. Cambridge: Cambridge University Press.
- McRobbie, A. (2014) Key Issues for Fashion Design Practice. Paper presented at CREATE Workshop, 30th January 2014.
- Slater, D. (2002) From Calculation to Alienation: Disentangling Economic Abstractions. *Economy and Society*, 31(2), pp. 234-49.