

The Creative Industries and Intellectual Property
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IPR and the dynamics of creation: the cases of videogames and of the music industry

Laurent Bach ^a, Patrick Cohendet ^{a b}, Julien Pénin ^a, Laurent Simon ^b

^a BETA, Univ. Louis Pasteur Strasbourg & CNRS, France

^b HEC Montréal, Canada

“A copyright theory called Creative Commons promoted by an organisation of copyright practitioners and academics, has emerged as a serious threat to the entertainment industry”

Michael Suskind (member of the International Association of Entertainment lawyers - IAEL) Billboard magazine Dec. 2006

content :

- Main issues : pieces of a framework of analysis***
- The case of the music industry***

As compared to “standard industries”, in creative industries :

- creation processes : collective process, close and complex interaction between three types of actors : individuals, firms and various communities, especially knowing communities
- creation processes are not (necessarily) following the "open science" type of rules; the “*underground*” rather follows ad hoc rules that are progressively emerging from the interactions between actors
- IPR system is a key component of these rules

- IPR regime has a key role in articulating the actions of these three actors, by :
 - ✓ reconciling incentives for creation
 - ✓ coordinating their activities for creating new “products”
 - ✓ leaving “creative space” for actors to develop their specific knowledge assets contributing to the creation, along specific pathways
 - ✓ avoiding to block future creation (anticommons, bootlenecks)

	<i>exclusion world</i> firms (+individuals)	<i>open world</i> communities (+individuals)
<i>incentives</i>	monetary incentives - exclusion + recognition	"knowledge-based" incentives - codification, codebook
<i>coordination</i>	market transactions + signal	community rules
<i>"creative space" of actors</i>	full appropriation of actors' activities (WFH)	creative slack
<i>future creation</i>	full appropriation of future creation	cumulativeness

***different mixes in different creative industries
=> Key question : what is the good balance ?***

static approach : *domains where ...*

firms and individuals are dominant : strong IPR

communities are dominant : weak IPR

dynamic approach : *tension/balance between the two worlds ie between firms/individuals and communities*

- phase of development
 - ✓ in *emergence phase*: communities / weak IPRs
 - ✓ in *exploitation phase*: firms and individuals / strong IPR
- technological changes largely drives :
 - ✓ *the interplay and balance of power between the 3 actors*
 - ✓ *the technical conditions of creation*
 - ✓ *the possibility of IPR system to secure the four roles*
 - ✓ *the design of new IPR devices*

Components of the music industry

Rights : *exclusive right to use and exploit it, on a free basis or against payment; covers any reproduction, performance, adaptation*

novelty - tangible form

copyright vs moral rights - patrimonial right

music work - music recording

Actors :

artists (composer, lyricist, interpret), arranger, publisher, producer, agent, business manager, record company, record distributor, A&R

manufacturers of records, distributors, sellers, radio or other media broadcasting companies, tour promoters, bookers

collective organisations in charge of rights management

music training schools, associations of amateur musicians, musical instruments companies

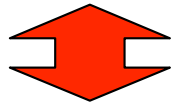
music critics

fans clubs

Emergence of music style

ex. *be-bop in Jazz music; rock + r'n'b USA 50s; reggae in Jamaica; house music in Detroit ...*

- communities + individuals + single-person firms
- codification / codebook:
creation of public good = *style*

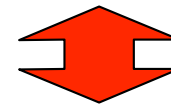


- weak IPR; key = recognition (moral rights)
- coordination by communities & hybrid actors (labels, producers-managers...)
- constant flow in/between communities

Exploitation of music style

ex. *Tin Pan Alley; swing 30s/40s; disco music after 1977 Saturday Night Fever hit ...*

- firms + individuals-stars
- generating revenues by embedding public good in private goods



- strong IPR; key= monetary incentives (copyrights)
- coordination by market transaction / IPR ownership
- publishing & recording contracts

***but ...* :**

- no copyright on « creative bricks » + creation also feeded by listening/ diffusion => no anticommons/bootleneck pbs
- evolution of copyright has allowed to maintain balance between the two worlds (although evolving)
- technology allows the opening of creative spaces (radio broadcast, electric recording, record player...)

creation - recording/production - diffusion artist->demand - diffusion CtoC

sampling
no space/time
constraints

home
studio

Myspace

standard -> *software*
Instruments / *sound card*

new internet
intermediaries

New interplay between three actors - IPR ?

- Growing/diversifying role of communities
- New IPR devices (copyleft, CC) for diffusion & creation
- Look for other support to standard IPR (concerts, derivative products, brandnames, collector CD ... electronics ? software ?)
- Changes in the nature of cumulativeness + impoverishment of creative slack ? (creation by recombination only)

- More work to disentangle the respective roles of the three actors and the corresponding functions of IPR
 - Future of the videogames and music industries, given technological changes : besides individuals ...
 - communities are required for developing creative slack
 - firms are required for generating revenues on a large scale
- => how to find new ways to combine the two on the basis of a renewed IP system ?

Thank you for your attention