



School of Business,  
Economics and Law  
GÖTEBORG UNIVERSITY

**Visualization of IPRs in the Creative Industry  
- A Model Based on Two Case Studies**

Olivia Gorajewski and Jessika Olsén

**Graduate Business School**

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Supervisor: Lars Andersson

# Abstract

The creative industry is an important part of the growing knowledge based economy seen today. In the past ten years this industry has become more and more acknowledged and the major role it is playing in this new context is becoming increasingly recognised. There is within this industry a need for a better understanding of which intellectual assets and properties are most commonly encountered as well as the legal structure behind them. The most urgent problem is that actors within the industry do not have knowledge or tools relating to how to package and commercialize assets and ideas.

This thesis is focused on how to visualise the IPRs relating to the creative industry and the purpose is to develop of a tool for this. With a better understanding of how intellectual phenomena can be used to extract value through an easily grasped functioning tool, it will contribute to a more active value creation in the creative industry and it will help the companies to see the potential of their assets, how they can protect them and turn them into property, and thereby help them to attract capital to the industry.

Using theory on intellectual property management combined with case studies, a foundation has been built for the development of the tool. The case studies have been focused on identifying intellectual assets within mainly two companies within the creative industry creating an understanding and ability to identify the specific problems for this industry. The tool will facilitate the process of understanding IP and the importance of turning assets into property. The tool will evolve better capabilities to manage intellectual assets within the firms and ensure that the assets are used at the maximum of their potential.

The thesis consists of three major elements, which are all originating from the thesis' title: Visualization of the IPRs in the creative industry. The core of the thesis is to give an understanding of how all three parts interrelate. Firstly, the background and problems creating the foundation for the thesis is presented followed by an introduction section about the creative industry presenting definitions and importance in the future.

The second section introduces some of the basic complexity when it comes to assets and properties, followed by a description of the three arenas where the asset management will be conducted. The next part of the report explains the legal constructions behind the most important intellectual property rights in the creative industry and presents brief conclusions to the function the protection has. Understanding of the legal background for intellectual assets and properties will simplify the understanding process of the main visualization model.

The two last parts of the thesis consist of an analytical character, dealing with conclusion about industry specific challenges followed by an explanation of the Control-Significance model developed to aid the industry in visualizing their assets.

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# 1 Introduction

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*The first chapter introduces the subject for the thesis, the context in which it is of importance and the problem forming the base for the thesis. The method is presented together with the case studies that has given the background to our analysis*

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## 1.1 Background

The creative industry is an important part of the growing knowledge based economy we can see today. The past ten years this industry has become more and more acknowledged and the major role it is playing in this new context is becoming increasingly recognised. The European Commission has recently released a publication concerning the need for future research relating to the creative industry within the area between culture and business development, emphasising the importance of this industry.<sup>1</sup>

The creative industry consists of many different types of businesses however, there are certain issues identified within the industry that needs to be overcome to be able to extract value to the maximum of its potential, attracting capital being one of the most important ones. Many of the businesses within the creative industry are run by people with little experience in business management and law. It is difficult for them to communicate and understand the value of their assets, if they even had been able to identify the assets. The next step is how to create a control position in relation to them.

With a better understanding of how intellectual phenomena can be used to extract value through an easily grasped functioning tool it will contribute to a more secure transferring mechanism of and a chance to a more active value creation in the creative industry community. This thesis is focused on developing a tool that will help the companies in visualising the intellectual assets within the company, the achieved control in relation to them and connecting them to the set vision of the company. This tool will help the companies to see the potential of those assets, how they can protect them and turn them into property, and thereby help them to attract capital to the industry. Investors will be reluctant to invest in something that is not secured through a property construction. With this tool the companies will become better in managing their intellectual assets which will ensure a value extraction at the maximum of their potential.

### 1.1.1 Collaboration with Norway

In May 2006 Lillehammer Kunnskapspark, on behalf of KONVEKST (Regional Creative Cluster of Oppland and Hedmark County), concluded a project initiated by Nordic Innovation Centre, Creativity meets Capital. A number of institutions and organisations throughout the Nordic Countries participated in the project.

The predominant thesis of the project was that the activities of entrepreneurs in the creative industries are undermined by investors' lack of understanding and willingness to invest in the sector. Underinvestment means the sector is failing to achieve its full potential. For investments to increase, investors and creative industries companies need better knowledge about each other's needs, capabilities, business models already in use in some parts of the industries and move towards a common ground.

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<sup>1</sup> European Commission, *The economy of Culture in Europe*

Intellectual Property became the main focus of exploration and Centre of Intellectual Property Studies at Chalmers University of Gothenburg (CIP) is one of the main contributors to the 3 part report which consisted of a learning DVD (Lazy Town Goes Global), a workshop Primer for IP analysis and an extended article on the subject.

Based on the results of the reports, KONVEKST (through Lillehammer Kunnskapspark) and CIP decided to extend the project into practical analysis (Due Dilligence) of two major players within the CIs of the KONVEKST region; Hunderfossen Familiepark and Peer Gynt AS.

The process commenced in November 2006 and was concluded by the end of February 2007 and has materialised in two extended reports.

KONVEKST, through Lillehammer Kunnskapspark, has been the facilitator for the analysis and the end result, but has also participated and contributed in the process and thereby extracted a wider knowledge of IP constructs within the CI's.

## 1.2 Problem

Intellectual asset management is a difficult issue at stake. This master thesis handles some of the difficulties that come along when managing intellectual assets, specifically in a creative industry setting. There is a need for a better understanding of which intellectual assets and properties are most commonly met in the creative industry as well as the legal structure behind them. The most urgent problem is that actors within the industry do not have knowledge or tools relating to how to package and commercialize assets and ideas within the creative industry.

Due to the described lack in underlying structures and tools to help companies extract value from their assets, the industry requires a help to visualize assets' potential. By developing a visualization tool for the most important IP in the creative industry we can address some of the challenges actors within the industry meet. The tool will facilitate the process of understanding IP and how to turn assets into property. The tool will evolve better capabilities to manage intellectual assets within the firms and ensure that the assets are used at the maximum of their potential.

## 1.3 Purpose

The purpose of this thesis is to develop an understanding for the intellectual phenomena which come about in the creative industry. The aim is to communicate IP in a clear and objective way to make it possible for all readers to understand what IP is and how it strategically can be used. The vision is to remove some of the sometimes envisioned complexity of IP and IPRs. As a facilitating part of this process a tool has been developed which can be used once an intellectual asset analysis over a companies assets is done. The tool will visualize the assets' status in the company.

The tool is eventually to be used in educational processes by CIP, to increase the understanding of how assets and their importance are linked and how they can be visualized in a matrix. The linkage between the assets and their visualization will increase the understanding of how they can be turned into properties making it an important pedagogic tool in educating intellectual property management.

The aim with the thesis is for the model to become a tool which can be used as a mutual language between IP analysts and the organization of companies in the creative industry. The tool will make the communication easier and the organization can become aware of the importance to secure and protect intellectual assets to be able to exploit intellectual creations full value.



## 1.4 Structure

The thesis is to be seen as roughly dealing with three major elements, which are all originating from the thesis' title: Visualization<sup>3</sup> of the IPRs<sup>2</sup> in the creative industry<sup>1</sup>. The core of the thesis is to give an understanding of how all three parts interrelate. The first part of the thesis, gives the theoretical framework to the three parts and is followed by an analytical part. However, to follow the logic in the thesis a more into detail introduction is as follows:

The introducing section aims at presenting the background and the problems which are the foundation of the thesis and the three core elements. This part also has a recap of the most important sources to the thesis; two case studies on well known Norwegian companies.

Since the creative industry is a fairly new conception, an introducing section about the definition of the industry and why is it important to analyze the creative industry with economic aspects follows.

The following section aims at introducing some of the basic complexity when it comes to assets and properties, followed by a description of the three arenas where the asset management is conducted. Since assets and properties are the core elements for most activities leading to this thesis, these conceptions must be mastered. Further on, the model used in the asset identification process is described to get a short background of the intellectual asset analysis tool used in the evaluation process.

The next part of the report explains the legal constructions behind the most important intellectual property rights in the creative industry and presents brief conclusions to the function the protection has. Understanding of the legal background for intellectual assets and properties will simplify the understanding process of the main visualization model.

The two following parts consist of an analytical character, deals with conclusion about industry specific challenges followed by an explanation of the Control-Significance model. The closing section concludes the thesis.

## 1.5 Method

### 1.5.1 Collecting information

The method used to collect data and information for this thesis is somewhat unconventional in regards to traditional legal theses. To obtain a general understanding, discussions with actors within the creative industry have been a good foundation. The authors of the thesis have had a close relationship with the project leader in Lillehammer Kunskapsark, Jörgen Damskau, as described in section 1.1.1. The connection with Lillehammer Kunskapsark has led to examination of several small companies within the creative industry with businesses based on intellectual creations. The companies examined are both entrepreneurial companies in the initial stage of developing their businesses and mature companies looking to further leverage their business. A full analysis on the intellectual assets has not been made on all these companies however, analyses have been made towards understanding the businesses and the challenges these companies are facing.

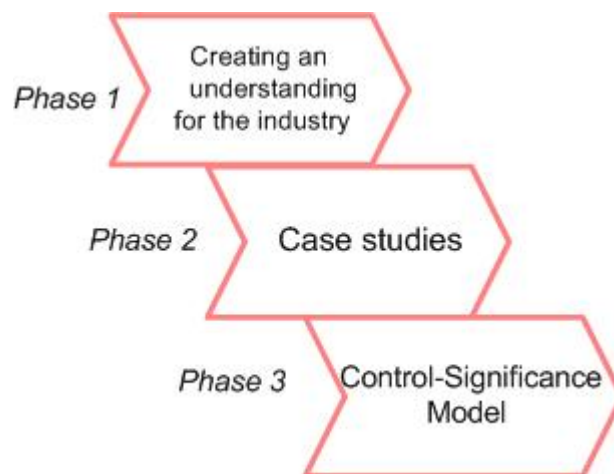
The cooperation with Lillehammer Kunskapsark has foremost led to two main case studies which lay as foundation for the thesis. The practical analysis of these two case studies provided a good base of information and knowledge about the industry and the problems they might face. The analysis of the two Norwegian companies was a full due diligence of the companies' intellectual assets, a so called intellectual asset analysis. The reports were meant to be used as guidance for the management

teams at the companies to understand which intellectual assets the company can extract value from. They were not to be seen as a set action plans but rather as assisting tools in their future business.

The reports were written in Gothenburg from November 2006 until February 2007 parallel with the master thesis. Several trips to Norway were conducted to facilitate a close dialogue with the companies and to extract as much information as possible. Small, but sometimes relevant, obstacles such as little understanding of customs within the industry, which were faced on the way were handled by discussions with the thesis supervisor who has past experience in working within the industry and discussions with both the companies and Jörgen Damskau.

The cooperation with Lillehammer Kunskapsark also led to a participation in “Next Stage 2007”- a conference which’s focus was the experience economy and the interplay between culture, the public sector and the industry. The theme for the conference was intellectual properties, copyrights in relation to new media and content production.<sup>2</sup>

Regarding literature the foundation for the thesis has foremost been legal texts such as the Swedish and Norwegian Trademark and Copyright Act, a report by the European Commission and a report from the UN regarding the creative industries.



## 1.5.2 Research method

As a base for the two above mentioned main case studies the intellectual asset analysis model developed at the Center for Intellectual Properties (CIP) has been used. The model has been a valuable tool to gain information about the industry and its problems since it focuses on identifying which assets that needs to be built and propertized in order to reach the vision and fulfil the companies’ strategy. The model will briefly be presented in the thesis to give a background understanding of what it covers.

The Norwegian case studies were an important source of information since they consist of very relevant intellectual structures and constructions and there were a lot to gain by studying them. There has not been any systematic management of IPRs within the companies and there seemed to be an overall lack of knowledge about IP and IPRs. By personally view how these actors approached IP and

<sup>2</sup> [http://www.hil.no/hil/ansattes\\_sider/nyheter/arkiv/lillehammerkonferansen\\_bliir\\_next\\_stage](http://www.hil.no/hil/ansattes_sider/nyheter/arkiv/lillehammerkonferansen_bliir_next_stage) , 20th of February 2007

IPRs and how they communicate their skills, reveals important data which has been included in the overall perception about which problems the industry face and how these can be solved.

The primary aim with the two case studies was, of course, to help the companies to expose them to their assets and create a dialogue and understanding about what the companies' building blocks were. On a more personal level it was highly relevant to learn lessons from the projects since the aim was to assemble as much information and knowledge stemming from the case studies about the industry as background data for the master thesis to develop a suitable model to visualize a company's intellectual assets. So once there was enough information gathered to have an overall knowledge about the industry, a developing process began to find a suitable tool which enables a simple overall perception of available assets.

## 1.6 Case studies

The main purpose with the case studies was to identify existing intellectual assets for the companies and how these assets best can be exploited in the future in order for the companies to succeed with their chosen strategy and reach their visions and goals. Reaching the goal would in some cases depend on intellectual assets which the companies had not yet secured, therefore needed intellectual properties for the future development were to some extent also presented.

The companies consist of a number of intellectual assets and properties. However, before they should decide upon engaging in enlargement of activities and setting up new goals, there were certain main issues that needed further attention. Considering the stage the companies were in there is no value in focusing on developing or acquiring assets that are not needed for the company's nearest future. The difficult part was to classify *which* these important assets are.

### 1.6.1 Case study 1- Peer Gynt AS

Peer Gynt AS is an arrangement and development company for culture and industries within Gudbrandsdalen. The company's aim is to with a starting-point in Henrik Ibsen's Peer Gynt and the historical Per Gynt who supposedly lived in the area of Gudbrandsdalen, offer the national and international market experiences whose origin is the original Norwegian culture, nature and traditions.<sup>3</sup>

The main arrangement and the supporting pillar within the company is the culture festival Peer Gynt-Stemnet, which is arranged each year in the beginning of August. It consists of three main activities; the show "Peer Gynt ved Gålåvatnet", the danceshow "JUV", and the concert "Ved Rondane", "Peer Gynt ved Gålåvatnet" being the most important. It has been organised in its present shape since 1989 and it is a well recognised play nationally in Norway.

The company produces, except for the arranged shows, also Peer Gynt labelled wine and organises and awards the Peer Gynt Prize every year.

Peer Gynt AS is a company focused on culture and creativity is one of their core competences. There are many creative processes ongoing within the company or with partners to the company, providing many interesting intellectual phenomenon as material for the thesis. Being in the initial stages of developing an internationalisation strategy it was crucial for Peer Gynt AS to map the existing

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<sup>3</sup> Information from Peer Gynt homepage

<http://www.peergynt.no/NO/Default.aspx?tabid=611&subtabid=612&subsubtabid=619>, the 21<sup>st</sup> of February, 2007

intellectual assets and investigate the current control situation in relation to those. In the working process with Peer Gynt AS several issues of interest for the thesis came to the attention of the management, making the case study broader than what first was at sight.

The final report produced for Peer Gynt was meant to be used as guidance in understanding which intellectual assets the company can extract value from and how they can control these assets. It was supposed to visualize how the company should prioritize; which assets they should focus on and where it is important to invest time and resources. The evaluation was made from how significant the assets are for reaching the set vision.

To be able to understand this, the company needed an understanding of the legal structures and aspects of intellectual property law. An understanding of the three arenas was also needed to see how an interaction between these can create control positions not possible to attain only with IP law. The importance of the actions taken on the business arena was brought to the attention of the management creating an ability to in the future use other tools to gain control and not accept any claims made by other actors.

## 1.6.2 Case study 2- Hunderfossen Familiepark

Hunderfossen Familiepark is Norway's third largest theme park situated close to Lillehammer. The company is a family business and was established in 1984 between the Huuse family and Ivo Caprino, one of Norway's most recognised artists. The theme park focuses on adventures and trolls which creates a value proposition different from other amusement parks. The park consists of more than 50 different attractions with Caprino's Adventure Cave and Fairytale Palace being the most popular ones.

The business concept is to be a park for the whole family with focus on play, learn and experience. The whole park is built with the basis in the Norwegian folk-tales and the brand of Hunderfossen is well established with recognition of about 95 % throughout Norway.

The park is mainly a summer vacation spot however, in December 2006 the Winterpark opened for the first time. Its goal is to attract the large amount of international tourists visiting the area in the winter season.

Due to the many creative elements within the park, the company consists of interesting intellectual phenomenon and could offer good statistic material for the thesis. They are also on the verge of expansion and strategies for further development of the attraction included in the expansion phase were discussed, as well as how the company was to safeguard their interest in terms of ownership and rights to exploit the innovations to come.

The report written for the case study was meant to be used as guidance for Hunderfossen to understand which intellectual assets the company can extract value from. It was supposed to visualize how the company should prioritize and which assets they should focused on and where it is important to invest time and resources. The evaluation was made from how significant the assets are for reaching the set vision.

In relation to the new project the report analyzed how Hunderfossen were to maintain control over their assets and freedom to exclusively exploit the innovations in relation to the costs required for achieving this. The evaluation included determining what asset and IPR's that Hunderfossen needed to own to obtain the desired freedom.

The point was also to create an understanding for the legal structures behind the innovations and creations. With a better comprehension for the different legal aspects of intellectual property law the company will have a better chance at creating stable structures for the future of the park.

## 1.7 Limitations

- Few case studies have been conducted and they are covering a narrow range of areas within the creative industry. However, through extensive discussions with both Lillehammer Kunnskapsark and participants at the “Next Stage 2007” conference the authors have been exposed to several areas in the industry and have in the process received positive feedback on the development process and conclusions.
- The thesis is written from a Nordic perspective. The cases that have formed the basis for the analysis are Norwegian and the legislation analyzed is Nordic. The identified specific features of the creative industry are based on Nordic conditions and may therefore differ somewhat from the European perspective. However, the IPR legislation in Europe is similar due to the efforts to harmonise the area and from a comprehensive point of view our conclusions should therefore be applicable.
- The model developed in this thesis requires set values before it can be applied. It is very difficult to set exact prerequisites for the levels used in the evaluations since a comprehensive evaluation has to be made. This makes the values imprecise and subject to human misjudgement and/or miscalculations. However, the model is not to be used as an exact science and the valuations are not to be set by someone with no knowledge in IP. Its purpose is to help a company visualize what control position they are in relation to their assets and not to provide them with an action plan.
- The model developed and the conclusion drawn within this thesis has been done so from the perspective of a company and its will to extract as much value as possible from the existing assets. The perspective of the artist or creator has not been the primary focus due to the difference in needs and goals comparing to a company.
- When discussing the creative industry the debate about control vs. creativity is often brought up. This discussion is not included in this thesis due to the complexity and extensiveness of it, however interesting it might be.

## 2 The creative industry

*This chapter contains a discussion on the background of the creative industries, the definition of the term and the economic impact of this growing industry. It also present some specific characters of the industry.*

### 2.1 Background and context

There are mainly three dimensions of culture; political, social and economic. The traditional positioning of culture lies in the middle between economy and politics, with the additional dimension of social function in the community.<sup>4</sup>

In March 2000 a goal was set in the European Council; to by 2010 make the EU “the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion”. In March 2006 an EU experts seminar was held on *Content for competitiveness* where it became further confirmed that the creative industries have great possibilities to create growth and employment and that a consistent policy alignment for this industry is needed.<sup>5</sup> The role of the cultural and creative sector has, in this context, been and still is largely ignored and the move towards a socio-economic approach is a relatively recent trend.<sup>6</sup> The socio-economic viewpoint meets numerous challenges such as the lack of statistical tools to measure the contribution of the cultural sector to the economy, the reluctance in cultural organisations to participate in learning how to give economic value to the world of art and culture, and the widespread view within public authorities of culture as a cost issue rather than an investment.<sup>7</sup>

This viewpoint is slowly changing and the contribution culture brings to the economy is becoming more acknowledged, not only as producers of products for consumption such as books, films and concerts, but also as a source of innovation in the industrial sectors. This can be seen in some of the European countries’ efforts to analyse the commercial value of creative industries, not necessarily including the cultural and social values.

### 2.2 Definition

The creative industry sector lies in the intersection between arts, business and technology. In order to discuss the creative industry and the characteristics of the industry the term needs to be defined. There is at the time no consensus in what term to be used when discussing the economy of culture let alone a definition of the actual term “creative industry”.

#### 2.2.1 Historical Background

There are mainly three terms used in relation to the economy of culture; the creative industry, cultural industries, and the experience economy.

<sup>4</sup> European Commission, *The economy of Culture in Europe*, p. 29

<sup>5</sup> Europeiska Unionens Råd, Pressmeddelande 2729:e mötet i rådet, ”Utbildning, ungdom och kultur”, Bryssel 18-19 juni 2006

<sup>6</sup> European Commission, *The economy of Culture in Europe*, p. 1

<sup>7</sup> European Commission, *The economy of Culture in Europe*

Approaching the term “creative industry” with the object of defining it requires humbleness. The term is believed to origin from Australia in the early 1990’s but have been further developed and defined in Europe by the UK, where a Creative Industries Task Force was set up already in the late 1990’s. They changed the concept of creativity from being heavily connected to artistic components, to “any activity producing symbolic products with a heavy reliance on intellectual property and for as wide a market as possible”.<sup>8</sup> The definition of the term in the UK is one of the widest used where individual creativity is the central input and intellectual property characterises the output. It is not only focused on copyright but includes all IP-constructions as well as several activities such as creation, production, and distribution. The UK lies in the forefront of this area and has realised the potential of the creative industries enhancing their will to invest heavily in this area.

The term “cultural industries” is more focused on massive reproduction and copyright making it mainly applicable on books, music, films and directly related activities. The definition excludes education activities, press critic activities and other activities included in the other definitions.

The Nordic approach has been to focus more on the “experience”, thereby using the term “the experience economy”. The object is to put the experience into an economic context and extract value from this.<sup>9</sup> The experience is what is considered as such by the consumer.<sup>10</sup> The value of a product in the experience economy lies in the experience provided by the product, and not in the product itself. The experience can have value in itself or give value through inclusion in another product or service.<sup>11</sup>

There have been efforts to set international definitions on this industry and in an assessment of these it becomes obvious that the motive has been to set clear and firm frames of what is to be included and excluded. WIPO has come up with the definition “copyright industries” where the copyright output is the main focus. When trying to set these clear frames it communicates that there is an easy task to decide what is to be included and excluded. This is not the case and such a narrow definition as WIPO’s excludes many actors that are a part of both the cultural and the creative part of the economy.

## 2.2.2 Our definition

Comparing the terms presented the two definitions that suit the aim with the study and which the authors have used as a reference point for the thesis are “the creative industries” and “the experience economy”. There is little difference between them and the experience of working and meeting with several actors within the industry in question has given the impression that the term “creative industry” is used in this setting. The term used henceforth in the thesis will therefore be “the creative industry”. However, the term is used somewhat more narrowly than the definition set by the UK Creative Industries Task Force. The focus in this thesis lies on products and content with a base in cultural expression and the specific issues identified requires narrowing the term somewhat.

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<sup>8</sup> United Nations Conference on Trade and Development, Creative Industries and Development, 13-18<sup>th</sup> of June 2004, UNCTAD XI, 2004

<sup>9</sup> Taken from the definition of the experience economy from “Next Stage 2007”, a conference in Lillehammer, Norway where representatives from the creative industries meet. 2007 the focus was on IP constructions within the industry.

<sup>10</sup> European Commission, *The Economy of Culture in Europe*, p. 48

<sup>11</sup> Jens F Jensen, speech at Next Stage 2007, Lillehammer 13-14<sup>th</sup> of February 2007.

The core industries and areas of activity include:<sup>12</sup>

### 1. Heavily industrialized and commodified industries

- Advertising and marketing
- Broadcasting (the radio and television industries, including their newer cable, satellite and digital forms)
- The motion picture industries (including distribution of films on video, DVD and other formats, and via television)
- The internet industry, including website creation, portal providers
- The mobile content industry
- The music industries: recording, publishing and live performance
- Print and electronic publishing, including books, CD-ROMs, on-line databases, information services, magazines and newspapers

### 2. Less industrialized cultural and creative activities

Traditional cultural activities:

- The visual arts (painting, sculpture)
- The performing arts (theatre, opera, concerts, and dance)
- Museums and library services
- Other creative activities such as crafts, fashion and design industry.
- Architecture
- Edutainment
- Tourism

## 2.3 The economic impact of the creative industry

Worldwide governments and regional authorities have begun to seriously take notice that cultural and creative activities are crucial areas of economic activities. To be able to reach the goal set by the EC that Europe is to become the most competitive and dynamic knowledge-based economy in the world the understanding of creativity as an driver for economic growth still have to be increased. The creative industries in 2004 estimated to account for more than 7 percent of the world's gross domestic product and are forecast to grow, on average, by 10 percent each year. These industries already represent a leading sector in the OECD countries with annual growth rates between 5 and 20 percent.<sup>13</sup> It is a growing sector providing more jobs and adding value to products and services. In US the export was in 1996 for the first time led by the cultural products such as films, music, books and computer software, surpassing the traditional industries. The copyright industry in the US grew during 1977-1996 three times faster than the annual growth rate of the economy.<sup>14</sup> The creative industries are already contributing to employment generation and export expansion however, according to UNCTAD the potential of the industry is still unrealized. There is a need for an insight in the special features of this industry; its intangible assets, licensing processes, entrepreneurial and management principles, forms of regulation and significant reliance on intellectual property.<sup>15</sup>

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<sup>12</sup> Carmen Marcus, European Commission Community Research: *Future of Creative Industries, Implications for Research Policy*, April 2005

<sup>13</sup> UNCTAD

<sup>14</sup> Carmen Marcus, European Commission Community Research: *Future of Creative Industries, Implications for Research Policy*, April 2005

<sup>15</sup> UNCTAD, p. 3



## 2.3.1 Nordic Conditions

The industry setting in the Nordic region has gone through tremendous changes over the last decades with a big decrease in manufacturing industries due to the advantages of moving these industries to low-cost countries in Asia and Eastern Europe. The media and entertainment sector has on the contrary grown steadily representing the increased value of the creative industries and innovation, through generation of new jobs and contribution to overall industrial competitiveness.<sup>16</sup> This is however not a development exclusive for the Nordic countries and in the increasing global competition an acknowledgement of the issues connected to this industry is crucial.<sup>17</sup>

In the development of the knowledge economy intangibles such as ideas, knowledge and artistic work is what increasingly holds the value and this puts the industry in another setting different from the traditional trading with physical goods. It is the ability to generate, commercialise and protect those intangible assets that will generate economic growth for creative industrial firms, industries and countries in the creative industry.<sup>18</sup>

In the process of bringing attention to the industry there is a need to connect the creative industries with other sectors in the economy to ensure that the innovative ideas are turned into profitable businesses. Nordisk Innovations Center has identified three core areas paramount for the Nordic countries to be able to position themselves in the forefront of the creative industries sector;

### - Professionalising creative industries

There is a need to raise an awareness of the fact that the creative actors operate in an economic playing field where business knowledge is needed. There is generally a lack of business competence in the increasing number of SME's within the industry.

### - IPR are the goods of the new economy

There is also a need for an intensified focus on the area of intellectual property rights (IPR). This can be viewed as the raw material that the entrepreneur can capitalize from. The commercial opportunities in this field must be realized and the competence and knowledge surrounding IP needs to be raised. Intangibles are risky to invest in and a lack of ability to communicate the value to potential investors and partners will make it difficult to attract capital to the sector.

### - Facilitating investments

This core area is closely connected to the competence surrounding IP as above mentioned. The creative industry has not been successful in bringing the investors into the new knowledge based economy and it is still difficult to attract investment capital due to the nature of intangible assets. In order for the CI-sector to grow to its full potential, the flow of capital needs to be increased. For this to happen, financial venture capital needs to be enticed to invest in the creative industry contemporaneously with the industry developing skills to use IP and communicate value connected to it.<sup>19</sup>

<sup>16</sup> Nordisk InnovationsCenter (NIC), an organisation with the vision to promote an innovative and knowledge intense business environment, has acknowledged the creative industry and its importance for the knowledge economy with investing heavily in research projects relating to the industry. KK-Stiftelsen in Sweden, which is creating platforms for knowledge exchange and competence development, is another organisation realising the importance of the creative industry and ensuring investments in it.

<sup>17</sup> Petra Nilsson & Nina Etelä, Nordisk InnovationsCenter (NIC), *Norden - A creative powerhouse*, a summary of the results stemming from 6 different projects financed by NIC.

<sup>18</sup> Ulf Petrusson, *Intellectual Property and Entrepreneurship – Creating value in an Intellectual Value Chain*, p

<sup>19</sup> Petra Nilsson & Nina Etelä, Nordisk InnovationsCenter (NIC), *Norden - A creative powerhouse*, a summary of the results stemming from 6 different projects financed by NIC.

## 2.4 Industry-specific features

The creative industries and its characteristics with the big focus on intangibles differ from the traditional manufacturing industries where trading with physical goods is the major activity.

One of the sectors within the creative industry that has been under development and growth for a long time in comparison is the media sector. It has been signified, and still is, by few big actors controlling the huge media market. The recent technological development has however somewhat changed the situation opening up for smaller players.<sup>20</sup> Hedberg and Stenius-Bratt present a summary of statistics from SCB<sup>21</sup> concerning the development of the creative industries showing that the number of companies within the industry has more than doubled between 1997 and 2003, while the number of employees has decreased supporting the thesis that the number of small players on the market increases.<sup>22</sup> Carmen Marcus divides the creative industry companies in two parts; the profit-making and the non-profit sectors of the industry. The profit-making sector is dominated by large conglomerates with presence in several parts of the value chain and largescale production, promotion and distribution in an international setting. This sector is characterized by the fixed costs necessary for the goods production which is the same no matter of the number of consumers. The non-profit sector is more focused on producing cultural value but still struggle with the harsh fixed costs, much due to the focus on good quality of the product rather than minimizing the costs.<sup>23</sup> The fact that they are rarely organised on a profit basis and the habit of receiving subsidies, grants and donations is affecting the industry as well.

### 2.4.1 Characteristics of the creative labour market

There are some key characteristics when it comes to labour conditions within the industry. There is a high degree of uncertainty related to the creative labour market and Throsby has identified four distinct features;

- The industry contains a **predominance of part-time workers** and **multiple jobholders**. Even if they are formally employees, they are likely to work on a sporadic basis or on short-term contracts. Many can be considered self-employed freelancers. Multiple job-holding is also a very common formula as the cultural workers need a minimum income for survival and some degree of financial security.
- **There are extreme differences in income distributions**. The majority of the cultural workers receive very low rewards while there is a small minority of stars with extremely high incomes.
- The level of **risk attached to expected rewards** is higher than in other professions. There is a close connection to talent and there is little formal training. The prevailing method is “learning-on-the-job”.
- A relevant issue for the differences between the arts realm and other industries is the one of “**art-for-art’s-sake**, the inner drive of the creative spirit, art-as-a-way-of-life” which offers to the artists non-pecuniary rewards.<sup>24</sup>

There is generally also an oversupply of labour in this sector with the temptation of fame and artistry.

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<sup>20</sup> UNCTAD, p. 4

<sup>21</sup> The Swedish Bureau for Statistics provides official statistics from various spheres in the Swedish society.

<sup>22</sup> Anna Hedberg & Hedvig Stenius-Bratt, *Intellectual Capital Management in the Creative Industries: From intellectual creations to intellectual property*, April 2005.

<sup>23</sup> Carmen Marcus, European Commission Community Research: *Future of Creative Industries, Implications for Research Policy*, April 2005

<sup>24</sup> David Throsby, *Economics and culture*, Cambridge, University Press

## 2.4.2 Characteristics of the creative product

The competition environment has changed and the traditional cost-based factors are not the main competitive factors within the new economy, especially the creative industries. Product quality, customization and speed of delivery are becoming increasingly important aspects. The products originating from the creative industry usually have both a tangible element such as the product format, and an intangible element representing the content. The intangible element has the characteristic of being non-rivalry and non-excludable making it difficult to keep proprietary as we can see in the development of the music industry today.<sup>25</sup>

The goods and services in the creative industry also often represent values that can not be captured by a market price. They represent ideas and ways of life, have a social and merit value and generate a number of externalities such as entertainment and building collective and social identity, all aspects that are detached from the price.<sup>26</sup> These are aspects making it difficult to build an efficient supply of goods making it important with government intervention and support.<sup>27</sup>

All these characteristics of the creative product make the intellectual property management relating to them increasingly important. The only way to build sustainable value into these is to find ways to protect them with different IP constructions.

## 2.4.3 The lack of investments

Due to the nature of the creative product representing other values than solely financial, there are strong arguments for subsidies and state support. However in a growing market where the trade with cultural goods is increasing, subsidies are no longer the main tool and they are rare in relation to private companies.<sup>28</sup> With the growing number of small private companies within the industry there is a need to facilitate the access to the financial markets and venture capital to support the commercial exploitation of these products. Because of the traditional extensive financing with subsidies in the creative industry there is a lack of knowledge in how to attract capital in other ways.

## 2.4.4 IPR

Intellectual property rights are important tools in packaging the intangible assets into value offers that will attract capital. There is a need for extensive insight in the regulatory framework and the support for the creative industry in the policy framework. Copyright is the main IPR used within the creative industry and management of this is what will not only exclude others from copying your work but also constitute the foundation for growth of the creative industries.

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<sup>25</sup> UNCTAD, p. 4

<sup>26</sup> Dayton-Johnson J, *What's Different about Cultural Products? An economic Framework*, Dalhousie University, Department of Economics, Canada, 2000

<sup>27</sup> UNCTAD, p. 6

<sup>28</sup> UNCTAD, p. 10

# 3 Communicating Intellectual Phenomena

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*This chapter will introduce some of the basic complexity when it comes to assets and properties. Since assets and properties are the core elements for most activities leading to this thesis, these conceptions must be mastered.*

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## 3.1 Introduction

Right and property concepts are broad terms and they have many interpretations. But to indulge into the world of IP it is of fundamental importance to keep the terms and concepts apart. Initially the concepts of *intellectual assets* and *intellectual properties* can seem as similar and diffusing and difficult to keep apart. The concepts are widespread and used in many contexts and they overlap and interact with each other. By explaining and establishing a theoretical framework behind the terms the purpose for the reader is to get a basic understanding for how the concepts can be used in the world of business, also known as the business arena. There is not one single definition established of the terms and the definition is interpretations made by the authors.

The background to why the terms are confusing is their structure. Intellectual phenomena are non-existing in themselves since they are a creation of the mind. Initially it does not really exist anywhere else but in our minds. Intellectual phenomena have to be communicated and accepted by others in order to have value. Communication is therefore the key aspect in order to conceptualize intellectual phenomena. What type of communication needed will depend on what type of structure we wish to achieve.

The complexity with how to define and what to call intellectual phenomena is part of the incentive to develop a model where the actors are forced to reflect upon what IP and IPR actually is and how they can strategically be used in a company's business on several levels, i.e. the three arenas which are going to be discussed in this section. A "proper" usage of the concepts will not only increase the understanding of the fundamental thoughts behind this thesis but foremost see new potential for actors in regards to assets in the company.

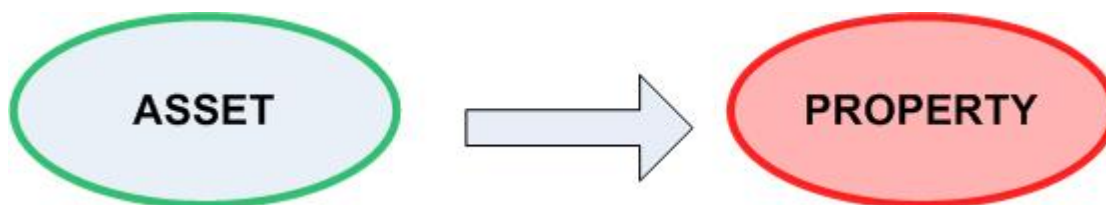
It is important to build structures in the business world where IP is respected and where others respect your IP. One must reify the asset owned and make others respect it as claimed property since an asset can only, or at least more easily, be traded with after it has been propertized. The key is to communicate the asset as property to be able to extract value from that property.

## 3.2 Asset vs. Property

In an initial stage intellectual assets can be called merely valuable objects. But to give it a less general meaning and to simplify the term they can be called as the "raw material" which a business is built of. They are the building blocks which need to be refined i.e. be accepted as a norm for a group of people, before value extraction can be done. Asset management at a firm includes defining, valuing, managing them as intellectual phenomena and treating them as assets. Assets per se are valuable for the company but not as objects for commercial transaction. Intellectual assets are the raw material for value creation

and even if they are not calculated for in the balance sheet they can still represent the most important asset for a company.

For a company to use their assets in an efficient way and use them as objects in a commercial transaction they need to be “propertized”. Since intellectual phenomena do not exist in itself the value of intellectual assets must convincingly be communicated with other business actors to fully be able to extract value from the asset. The intellectual assets can be seen as a company’s claim towards its relations. These claims can be propertized through a variety of constructions. Some claims are however not yet propertized and therefore merely remain as claims in other’s eyes. The assets need to be conceptualized into something which in the mind of people is more tangible and accepted by others and as something actually owned and/or controlled by the company. Property management included defining, valuing and claiming the intellectual phenomena as value propositions. The value must successfully be communicated externally with flexibility between formality and creativity to simplify the external acceptance process. One has to *claim* the asset to be a property. As mentioned above what type of communication will be most successfully is dependent on what structures want to be achieved. The essential is that the asset is experienced by other actors as a property on the judicial arena but most importantly on the business arena.



**Figure 1 Assets are more or less open if they are not propertized (green). When they become propertized they are no longer open objects and an actor can have exclusive control over the asset (red).**

If an intellectual asset is legally protected by copyright, trademark, design right (or patent) it is an intellectual property. The already existing norms such as legal protection in society regarding how to deal with certain intellectual assets as properties should be followed where possible. Intellectual assets can become property through other means than legal. Where there yet are no norms regarding propertizing assets a company has to use their creativity to convince the unconvinced regarding the value of an asset. Contractual constructions do not per se propertize an asset but it can very well have a propertizing function through creative constructions. The key is to *package* the asset as a property.

The reason why it is important to turn assets into properties is that an asset that is seen as a property will be easier to communicate and most importantly engage in transactions with since the perception will be that the transaction’s object has a value and is controlled through legal protection. It is a matter of control where the owner must make other actors believe that he has enough control over the asset to use it in a business transaction.

To sum up the section, an object can be seen as either an *asset*, which is a valuable object to an actor although it is tricky to claim ownership to it in regards to third parties, or as *property*, which is more or less an exclusive control over an asset.

### 3.2.1 Strong and weak properties

Whether a property is strong or weak can be seen from many different views, depending in what context. One is in the link between assets and properties in a company. The ultimate situation is when the assets in a company to 100% match the properties. This gives a strong protection and better negotiation position for the company. It also minimizes the likelihood of losing the asset in e.g. a future dispute. This however is difficult to achieve since the scope of an asset is often broader than a property's and therefore there will never be a 100% match. One should always strive to have as strong assets and properties as possible.

The strength is also related to the extensiveness of the control. Strong properties are foremost the assets the company has wide control over. A way to measure the strength can also be to evaluate the clearness of a property's character. The most obvious ones are the properties that have legal protection. A typical strong property is copyright protected work since the protection is obtained as soon as the work is created, without any formal action needed. The weakest properties are the ones that are yet not accepted by other actors and the society and need external communication before extraction is possible e.g. relations, databases and human resources.

When discussing the strength of the properties the theory of three arenas presented below in section 4 has to be included. It is possible to have a property that is strong on the business arena, that is other actors in the business accept the property as your property, which will not be seen as a strong property in the legal arena, that is in court. Even if acceptance has been created on the business arena ensuring that no one infringes and that it becomes a tradable goods, it might not be accepted as such on the legal arena.

With good knowledge about the assets strengths and an understanding of the different arenas the company is playing on, a company will have a better chance to conclude more accurate strategic decisions for the company's envisioned future.

## 4 The three arenas

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*This chapter outlines in what context actors are playing, explains the three arenas and how they interrelate with each other, and why they are so important to understand.*

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### 4.1 Introduction

According to Professor Ulf Petrusson<sup>29</sup>, the director of CIP, companies' intellectual asset and intellectual property management should be seen as a game on three arenas; the *administrative* arena, the *judicial* arena and the *business* arena. The arenas all interrelate in a complex way and should be regarded as structural platforms to be used in the construction of intellectual properties and IPRs. Regardless of what industry a company is part of they will all be subject to activities on the three arenas and therefore it is important to understand the arenas and their correlation to be able to communicate and build the appropriate structures in all three arenas in order to be successful in managing one's assets.

### 4.2 Administrative Arena

The processes and activities in the administrative arena are governed to a large extent by a formalistic procedure and it is also the formalistic infrastructure that is important. It is e.g. where a trademark is registered if the trademark application is approved. Some intellectual properties can obtain this protection through usage as well, e.g. trademarks, and copyright is obtained without any sort of registration. For copyright protection there is no administrative arena in Norway and Sweden since copyright is obtained automatically (see further down in the report section "Copyright"). The benefit with no administrative arena is the absence of costs which are associated with the procedure in the arena. On the other hand an absence of the administrative arena implies a greater uncertainty of the claimed IP and a greater uncertainty to end up in a court procedure.

The administrative arena is primarily national and representative institutions for the formalistic procedures are patent offices. However, there are regional institutions e.g. the European Patent Office (EPO).

### 4.3 Judicial Arena

If a conflict should rise originating from intellectual properties this will be resolved on the judicial arena. The judicial arena is the "court" and where an actor turns to in order to file a lawsuit for an infringer of an IPR. If a property can be claimed and upheld on the judicial arena it is to be considered as a solid property also on the business arena which in turn means that value extraction can be secured. The most important credentials from the judicial arena is the legislation of a country and precedents in similar cases to use in forecasting outcomes of infringement cases. What is more relevant is that the information obtained in the just mentioned experiences can be used strategically in negotiations on the business arena to give advantageous positions.

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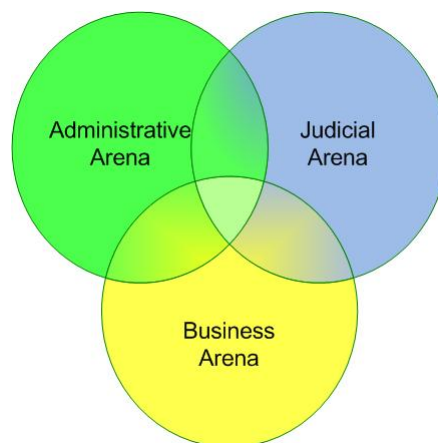
<sup>29</sup> Described in his book *Intellectual Property & Entrepreneurship*, p. 102 ff

## 4.4 Business Arena

The business arena is the most important arena of the three, and it is where most action happens. To ensure that other actors respect your IP the previous two arenas play an important role in actors' attempts to communicate the value of an IP however, the business arena is where the property and its value is accepted. Without acceptance on the business arena it will be difficult to create and sustain value since much money and resources will have to be spent on litigation and administration. Even when acting on the legal arena it is important to keep the business arena in mind since those are interacting extensively. By making claims based on agreements, market power and other business means, IP is can be constructed and validated on the business arena. The administrative and judicial arenas are to be seen as supportive platforms for the business arena since it is each actor's communication skills on the business arena that determine the extraction value the IPR has from a business perspective.

## 4.5 Interaction on all three arenas

The arenas are separated in the thesis primarily for communicative reasons. In reality they should not be seen as three separate forums since they are interacting. Instead the focus should lie in seeing it like a game on all three arenas which as mentioned earlier must be mastered to in the future be able to extract the most value of an asset. With the right knowledge about the areas' strengths and weaknesses one can strategically plan the usage of an asset.



**Figure 2 The interaction between the three arenas.**

A way of exemplifying a business arena claim is the usage of the symbol <sup>TM</sup>. By adding the symbol to a trademark the trademark holder claims a proprietary right to the trademark. The object is not secured on the administrative arena since no registration is completed (the symbol ® is used if the trademark is registered) but still the actor claims to have a right to the name and since trademarks can be granted protection through establishment the outcome on the legal arena may be uncertain in an actor would claim better right to the trademark. However, by actively use the symbol in business settings the actor is playing a game on the business arena to hope to in case of a court case be able to exit a lawsuit as the winner.

The usage of symbols also increases the uniqueness of the value proposition the party is claiming on the business arena since he can towards other actors win trust and weight to his value offer by showing acceptance on any of the other two arenas. By instead registering the trademark mentioned in the section above and use a ® instead of a <sup>TM</sup> it will give the claim made on the business arena more credibility thus increasing his value offer towards third parties.



Notable is that both the administrative and the judicial arena are linked into national structures whilst the business arena is an international playground with international networks, markets and systems. For companies that have the intention to create value internationally it becomes even more important to communicate the status cleared in the other two arenas.

# 5 Intellectual asset analysis

*This chapter aims at explaining the intellectual asset analysis that has been main method in our analysis of the Norwegian companies forming the basis of our analysis.*

## 5.1 Introduction

The base for the case studies which precede the thesis is the intellectual asset analysis which is a model developed at the Center for Intellectual Properties (CIP). The closest theoretical and practical comparison the model can have is a due diligence of a company, although the IA model is specifically adjusted to suit companies which mainly consist of intellectual phenomena. The model has been a valuable tool to gain information about the creative industry and its problems and have been a great help in the development of the Control- Significance model. The model is also somewhat of a base when doing the Control-Significance analysis since the assets which are a good model for evaluating assets for the Control-Significance model actually is an intellectual asset analysis. It is not a requirement but since its properties as an asset analysis tool is tried and honoured by the ones using it, its core utility is still applicable.

The model will briefly be presented in the following section to give a background understanding of what it covers and in what sense it has added value to the Control-Significance model.

## 5.2 The aim with an intellectual asset analysis

The main objective with doing an intellectual asset analysis in a company is to create a better awareness of what assets a company actually has at their disposal. It is a valuable tool since it focuses on identifying which assets that needs to be built in order to reach the vision and fulfil the companies' strategy. By mapping out and more important controlling the most important intellectual assets the company has today the likelihood to reach the company vision increases which in turn results in an increased potentials to extract value from the assets.

The reason why the focus is on intellectual assets is that the intellectual asset selection of a company in reality covers wide scope of resources. The selection consists of both intellectual properties such as trademarks and copyrights but there are also resources that have *potential* business interest such as relations and ideas.

### 5.2.1 Brief introduction to the model

The base for an intellectual asset audit is the company vision. Claiming the vision as an initial step in the IA analysis model has proven to be very effective as well as being a good starting point in the IA analysis. The natural first step in the model is therefore to identify the vision and the overall business strategy of the client firm. With a starting point in the vision and the strategy all relevant existing and future intellectual assets of the firm should be identified to link them to the vision. The following step is to identify which assets that need to be built and further developed in order to reach the vision and fulfil the strategy. The intellectual assets that need to be identified include:

- Innovation assets, such as technical functions, know-how, IPRs, brands etc.
- Network assets, such as value propositions, customer relations, alliances, standards etc.
- Venture assets, such as visions, strategies, organization, incentives, “tool box” etc.

- Financial assets

## 5.2.2 How to define the vision

Since the vision as a concept play a big role for the purpose of this thesis and how the Control-Significance model has been developed, a brief conclusion of what the authors consider being a vision needs to be stated.

There is no one clear definition of what a vision is. However, there are some basic core elements which explain the concept of it. The vision is one of the most important concepts in the creation of a well-functioning organization and for building a successful company. It is important not to confuse the term and its meaning with terms like “mission” and “strategy”. The vision should be the framework for a company’s daily management and the organization must have an understanding of how this framework connects with the rest of the activities in the company. An innovative vision should encourage the employees to feel a unity with both the company ass such and with the other company members. To create consistency in this unity with the employees it is encouraging to choose a vision which will work for a long period of time without the need of major changes. A good vision that is well thought through and should consists of the core principles and the envisioned future.<sup>30</sup>

The company must recognize what the core values and activities are. The cores should answer the question “what we stand for and why we exist” and it is important that they are sustainable and timeless. These never changing values should be separated from the operating business practice and strategy, which should be changing constantly in response to a changing world. The latter is the stimulating progress and change which is not part of the core principles. These two parts should have a natural interplay so they in combination answer the question “where does the company want to be”.<sup>31</sup>

Once the vision is taking form it has to translated into a strategy and the asset analysis so that the match each other and allow the foreseen development of the company. The next step is to connect the vision with what the company wants to control and what they actually can control. This connection becomes even more important for small actors since they often have no possibility or the right finances to protect all assets they come in contact with. This is where the Control-Significance model becomes central in helping to visually show how the control over certain assets is connected over their significance to reach the vision.

## 5.3 Enabling value extraction

The intellectual assets analysis provides a full blown mapping of the company’s assets. One difference with the IA analysis from the regular due diligence is the fact that the analysis connects the assets to the vision. With the analysis as a base it will become easier for the company to realise the potential of the assets and how to extract the maximum out of them. It will facilitate the understanding of how different assets are connected to each other and how assets with little connection may increase in value if connected to each other. The fact that the analysis includes the relation to the visions will ensure that the resources within the company are focused on the assets with the closest connection to the vision. If investing resources and time into assets that are out of the core business this needs to be a decision taken consciously and not because of unawareness of the situation. This will ensure maximum value extraction from the intellectual assets within the company.

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<sup>30</sup> Bergman Bo, Klefsjö, Bengt, *Quality from customer Needs to Customer Satisfaction*, p. 404 ff

<sup>31</sup> Bergman Bo, Klefsjö, Bengt, *Quality from customer Needs to Customer Satisfaction*, p. 404 ff

# 6 “Legal Framework”

*This chapter explains the legal constructions behind the most important intellectual property rights in the creative industry and presents brief conclusions to the function the protection has. Understanding of the legal background for intellectual assets and properties will simplify the understanding process of the main visualization model.*

## 6.1 Introduction

There is a benefit for both creators and other actors within the industry to be better educated about the legal frameworks of IP. Better knowledge will increase the actors' possibilities to exploit them in order to build a sustainable business.

## 6.2 Trademarks

To get a better understanding of the basics of trademarks, the following section aims at explaining the legal constructions and practical function of trademarks, followed by a brief conclusion to the function the protection has.

### 6.2.1 How to protect a trademark

There are two ways of protecting a trademark:

1. Through *registration*
2. Through *establishment*

A registration of a trademark can be done either nationally or internationally. Generally there is no difference between trademarks that have arisen through registration or through establishment which means that an established trademark's protection is just as strong a registered one. There are benefits though with registering a trademark, mostly from a proof perspective whereof registering is preferable. Notable is that a trademark that is registered must be taken in use within 5 years from registration or else it can be revoked due to passivity.

There is a widespread usage of the mark <sup>TM</sup> in connection to use of trademarks. The mark has, contrary to the ®, no formal meaning. The ® means that the trademark is registered while the <sup>TM</sup> is nothing but communicative means to third parties to indicate that the mark is already used by an actor. However the use of the <sup>TM</sup> can also be a conscious strategy. This is a perfect example of the interacting on different arenas. The <sup>TM</sup> is a mark used on the business arena, while the ® is a mark stemming from the administrative arena. A registration cost money and if there is an uncertainty of whether it is worth the resources to register a trademark, using the <sup>TM</sup> mark can initially scare off other actors from using the same trademark until the trademark is tried at the market. It allows for a prioritising of resources and still shows awareness of future usage and protection of the trademark. The <sup>TM</sup> communicates to competitors that there is a consciousness regarding the brand. This hopefully creates an acceptance on the business arena helping to build a control position for the company.

## 6.2.2 What can be protected

Words, names, figures, letters, numbers, shapes, ornamentals, packages, sounds, scents and colours are elements that can obtain trademark protection. The first requirement for obtaining protection for a mark is distinctiveness for the mark. The crucial question is the likelihood of confusing it with another trademark of the same type of products. To determine whether a trademark is confusingly similar an overall assessment is done but with stress on following matters:

- the likeness of goods
- the likeness of marks and symbols
- visual and phonetic representation
- overall impression
- goodwill protection

The second requirement is that the mark must be able to be graphically representable.

## 6.2.3 Classes

Before registering a trademark the trademark holder should have a view of how the usage of the trademark will be. There are 45 different classes to choose from and there are several usages within the same classes. Deciding in which classes to register could be a tricky question and it may seem appealing to register in as many as possible to avoid limitation for future business expansions. There are mainly two limiting elements though. First, it is required that the trademark is, within five years from the registration, being used in all classes it is registered in. If not the registration can be cancelled due to passivity if a third party wants to register the same/similar trademark in the same class and revokes the registration. Second, it is costly to not only register in many classes but also to renew the registrations.

## 6.2.4 Why protect a Trademark

The primary reason for protecting a trademark is to give the holder an exclusive right to use a particular trademark in the business, which can be eternal if certain requirements are fulfilled.

### Trademarks are valuable assets

It is well known that a good brand name is a great intellectual asset for a company. Thus, the most important reason to register a trademark is to preserve the rights to the often very valuable asset a trademark is. In many countries one may not have the right to a trademark even though you have created it trademark and are using it, if it is not registered. By beating the first company to the registration office a third party may take the trademark and obtain ownership. On the other hand most countries provide at least certain rights based on just the use of a trademark, as mentioned above. However, to obtain protection the trademark must become established on the market, which is time consuming, not to mention the fact that there is a risk that a company may fail if the usage is not sufficiently well-known. The risk connected to this strategy is also that another company claims the name in another country and within the same business segment. Therefore, a trademark should be registered to ensure that it is possible to affirm your trademark against other parties.

## Discourage other parties

Registration of trademarks is discouraging other parties from using the trademark. Registration makes it easier for third parties to determine that the trademark is already protected when they do trademark searches on the net or at the national trademark offices on trademarks that they are considering to use. Other parties are also less likely to invest in a trademark that they can clearly see is registered.

## 6.2.5 International registration

### Why international registration is important

For businesses which aim at entering international markets, trademark registration outside of the domestic country is an essential element. If the company has an idea of potential international markets which they intend to market the park in it is advisable to register in those countries early. If the focus of the business activities is exclusively in the domestic country, then perhaps it is enough with a trademark registration exclusively in that specific country.

Deciding which countries to register trademark is a complex issue. Registering a trademark in every possible country is an expensive proposition. The trademark should primarily be registered in the markets where the trademark holder is to be active in. The cost must be taken into consideration wherefore a domestic registration may save the company money which may be needed in other activities.

The process with international registration can be somewhat complicated. Below the basics for international registration processes are described. However, it is advisable to hire a trademark lawyer to assist in this process.

### WIPO Registration

International trademark protection can be obtained through an international registration in accordance with the Madrid Protocol system. The base for the registration is a national registration. At the moment there are about 66 countries part of the Madrid protocol. The prices for international registration can be rather large. Application for a trademark in three classes lies between 15.000-190.000 SEK depending on how many countries are designated. The benefit with this system is that hindrance in one country does not mean that the whole application is invalid. The drawback is the high costs which may be unreasonable due to the low expected customer ratio from countries outside of Europe and the fact that the trademark must be used in the designated countries in order to sustain.

### EU- Community Registration

Instead of a WIPO registration a Community protection can be obtained through the European central trademark office. If the application is accepted the registration is obtained in 25 countries. The costs for a community trademark are lower, around 25.000-30.000 SEK. The drawback is that the whole application will become invalid if there will be hindrance for registration in one country.

## 6.3 Copyright

Understanding copyright is central for everyone involved in the creative industry since it is the most common legal means to protect intellectual phenomena occurring within the industry. Copyright is an effective mechanism to generate wealth in the industry and it enables value creation and value extraction of artistic work. Through the control created by copyright the rights holder obtains a

position where he can commercialize and capitalize on the creations made through sale or licensing of the rights to the work. The construction of copyright ensures that investments made can be returned and the length of the copyright protection aid in creating long term agreements where the commercial value is enhanced.

### 6.3.1 Introduction

Copyright is a right to exclude others from copying your work. There are two aspects of copyright protection; the moral and the economic. The moral right is a personal right which in principle is not transferable. The moral right consists of the right to be named and the right to be respected. The economic right regulates the right to commercially use the copyright protected work. This right includes the right to *use*, *make changes* in the work, *multiply* it and *publish* it. In contrast to the moral right's transferability, the economic rights are fully transferable.

### 6.3.2 Requirements for protection

Copyright protection, the exclusive right to a work, is acquired automatically as soon as the work is created. There is no formal application or registration. According to the Copyright Act there are three requirements for acquirement of copyright

- that it is a work,
- that it has been created by a human being and
- that it has achieved a certain distinction and originality, referred to as *artistic height*.

#### Work

There is no artistic appraisal included in the evaluation of a certain works' artistic height. Thus, the actual quality of the work is not relevant to obtain copyright protection. This means that almost anything that is a result of a personal creative process can be subject to copyright and the term work includes novels, film, music, paintings, photos, architecture, software, logotypes, etcetera.

Copyright protection arises the moment something can be considered a work, which can create difficulties in determining the time of emergence of copyright if something is created in stages.

If a work is created but all or most of it being based on a original copyright protected work it is called derivatory work. A typical example of a derivatory work is a translation. The creator of the derivatory work obtains copyright protection for the derivatory work, but will need permission from the original creator to use his work commercially. However, it is important to keep in mind that there is a requirement of originality for the derivatory work as well. A reproduction of a copyright protected work does not achieve derivatory copyright.

The difficulty concerning this issue is to determine whether something is derivatory or independent work. It's permitted to be inspired by other's work but there is a fine line between being inspired and build on someone's work.

#### Originality

In order to achieve copyright protection the work has to have a level of originality. The requirement of originality is rather low in the Nordic countries entailing that it is easy to obtain copyright protection for a work. There is rarely any question of whether a work is original or not, but rather how broad the scope of protection should be. The scope of protection is determined by the level of originality, the more original the broader scope of protection.

The originality requirement does not imply a requirement of novelty, as is the case with patent protection. As long as the work is a result of independent creativity copyright arises, even if the work is identical to something already existing, provided they are created independently. Copyright only protects from direct copying and does not hinder anything else.

The originality requirement does not demand a certain height of quality either. A stipulation of quality height would come in conflict with the underlying purpose of copyright; to encourage artistic freedom and creativity. It would also be difficult to establish standards and regulations for what quality is and there would be a risk of subjective judgements and favouring of certain types of works.

### 6.3.3 The effects of copyright

Copyright comprise of the exclusive right to exploit the work by producing copies and making it available to the public. The copyright relates to the work be it in original or altered manner, including adaptations and translations.

#### Reproduction

The exclusive right to reproduce the work is the most important part of the protection obtained by copyright. Copyright does not give the right's holder any right to use the work but provides a right to exclude others from reproducing it. It protects works from direct copying without the authorization from the right's holder.

#### Who can obtain it

Copyright protects only work made by individuals of our species since the human intellect is needed in creative actions. This means that a legal entity can not be considered creator of a work.

The copyright belongs to the creator of the work. It is not unusual that there are several creators and if the contributions can not be separated they will all obtain a shared copyright to the work. This means that the creators may not dispose the work solely, but must mutually agree on the use of the work. However, if the work is separable in regards to the different contributions the creators may dispose of their specific share as they wish. The difficulty is to draw the line between what has been created by whom and there is not regulation in law of how to determine this.

#### Publication

The law regulates what is considered making a work available to the public and this includes communicating the work to the public, public appearances, exhibition and distribution of copies of the work. This gives the right's holder control over public displays and arrangements.

#### Moral rights

The Copyright act regulates the creator's right to be stated in relation to his or her work. If a work is reproduced or published there is an obligation to state the creator in a proper manner. There is also an obligation to not alter a work or make it public in a form or context that may damage or disrespect the reputation of the creator. These rights are the moral rights of copyright.

### 6.3.4 Neighbouring rights

The Copyright Act also regulates the so called neighbouring rights. These rights apply to practicing artists, producers of sound and motion pictures, producers of catalogues and photographers. The



neighbouring rights are created to give protection for representations that may not reach the level of being a work and therefore not achieving copyright protection in the regular way. These creators obtain copyright protection but not as extensive as the ordinary one, and with a shorter time span.

### 6.3.5 Employer's rights

There is no regulation of employer's right to employees' copyright. The only area which regulates this question is software areas, where the employer is considered the copyright owner, if the software is created within the scope of the employees' job description. Other areas of work is not regulated at all, but is usually decided by the custom of the businesses and the agreements, collective or individual, between employers and employees. In reality the employer usually acquires at least the right to use the work automatically through the employment. It would be an unreasonable situation if employees that were hired to create something, where copyright arise, would also own all rights to it.

### 6.3.6 Duration of Protection

The duration of copyright protection differs depending on the type of work and the creator. The general time of copyright protection is during the creator's lifetime and 70 years thereafter. If there are several creators involved the 70 years last with effect from the latest death of a creator.

The rules require that the creator is known and that the work is made public. If the creator is unknown and the work is made public the duration of the protection is 70 years from the time of publication. If the creator is not known and the work has not been made public the copyright lasts 70 years from the creation of the work.

Neighbouring rights last between 15 to 50 years.

### 6.3.7 Limitations to Copyright

There are several exceptions to copying protection and publishing obtained through copyright of a work. The most important exception is the right to make copies for private purposes. This requires that the work has been made public with the consent of the creator and that the copies are not used for purposes other than private. There are however limitations to this exception as well. It is forbidden to copy an entire literary work and computer software, even for private purposes.

There is also an exception regarding copying for educational purposes and for temporary reasons.

### 6.3.8 Transfer of rights

Copyright is a right that can be freely disposed and therefore transferable between parties. Copyright is not transferred when copies of the work is bought or sold. Copyright differs from other intellectual property rights by its dual protection. As mentioned above there are two types of rights related to copyright; economic and moral. There are different regulations regarding those rights and it is important to separate them and be aware of their different aspects. The aspects of the moral rights connected to copyright can be limiting on the economic rights holder's freedom to do business.

#### Economic rights

The right's holder of a work protected by copyright can transfer the economic rights in two ways; either through a complete sale of the rights or through a license. The economic rights include all

commercial use of the work. The general rule when licensing copyright is that there is no right to sublicense the work, meaning that this has to be specifically stipulated to be included.

When transferring copyright it is important to be very explicit in what it is that is transferred. The courts have a tendency to interpret agreements narrow excluding everything that is not specifically written. Therefore it is not recommendable to in transfer agreements use concepts such as “all rights” without further specification.

It is possible to transfer rights to future works as well. This can be done very extensively by transferring the right to all future works made by the creator. However, the agreement has to be reasonable to avoid invalidation on the ground that it is unduly.

## Moral rights

The transfer of moral rights can not be handled in the same way as transfer of economic rights. The possibilities to transfer the moral rights relating to copyright are limited and according to the Copyright Act it has to be explicitly regulated and only in relation to uses which are limited as to their character and scope. This is to achieve a strong protection for the creators’ right to be named in relation to their works. However, there is contractual freedom and it is not rare that creators need to make concessions in those rights for practical reasons. To ensure that a transfer of those rights is made it is necessary to explicitly state that the creator waives his rights to be named and respected. A transfer of “all rights” is not to be interpreted as an inclusion of the moral rights and even a transfer of “all moral rights” has to be specified in character and scope. How and to what extent the moral rights can be transferred is business related.

The tendency in the business arena goes in the direction of easing the right to be named. It is enough to view radio and television today compared to 10-15 years ago. Naming the artist after playing a song or showing the full credits after a movie was once obvious. Going even further back in time one can also see a shift in who is named. In relation to songs it was the writer of text and music that was in focus and not the performing artist to the same extent as it is today.

The obligation to name the creator is also dependent on how convenient it is to present the name. In a theatre act the creators such as director, music composer, manuscript writer is not named in the actual show but in the programme for the act.

There is also a difference between industries relating to whether it is the actual creator or the commercial origin that is stated. Looking at stuffed animals it is customary to state the commercial origin rather than the actual creator, for example all stuffed animals from Disney have a label stating that Disney is the creator. There is a label on all animals making it possible to mark the product with copyright but it is always the economic rights owner that is stated and not the moral rights owner. This shows how a practice can be developed on the business arena and with the acceptance of the actors it can eventually be claimed as practice also in the legal arena. This example show how it differs depending on the product, on a Mickey Mouse stuffed animal only Disney’s name is stated, but in a movie or a book with the same figure the actual creators are named.

# 7 Concepts

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*This chapter explains how concepts can be protected even though the legal framework for protection of a concept may be lacking. It presents the importance of packaging assets into value offers that are perceived as owned by the creator.*

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Copyright gives protection for the tangible form of a work, it arises from the moment the work is fixed in a tangible medium. An idea is therefore not protected through copyright until it has been expressed or fixed in a manuscript, sketch or something similar. One of the basic principles of copyright is that the ideas, thoughts and facts that the work is based on is not included in the scope of the copyright. Consequently it is not forbidden or even possible to “steal” ideas or motives. The idea and motive does effect the evaluation of an infringement though, in the sense that the examination of similarity between the works is usually based on the idea and motive behind it. If the works have different concrete expressions the presumption is that they build on different ideas and are therefore different works not infringing on each other.

The legislation as it is interpreted today does not allow for intellectual property protection of concepts. However, this does not mean that one can not commercially transfer concepts. It is in this aspect interesting to look on the trading with TV-formats. Those are according to the current legal state not protected by copyright, still there is a widespread business to sell and buy TV-formats. They are, in spite of their uncertain legal status, treated as transferable property and the industry has accepted them as such. This shows how claims can create a status outside of the legal sphere through acceptance in the business. However, this does not mean that it would hold up in court if a potential infringer is litigated against. In the legal arena ideas and concepts are still not covered by copyright.

The trade with TV-formats has been made possible through packaging and acceptance on the business arena. When having come so far as creating control over the different elements involved in the business, through for example copyright, trademark rights or contractual means, the packaging becomes the crucial next step. All those elements need to be packaged together into an attractive offer that is perceived by others as a protected concept. With this strategy it is possible to include elements that are hard to control otherwise and the grand total control that is created is becomes stronger than the different parts respectively. The brand plays an important part in this strategy being the bearer of the whole concept. This can especially be seen in the example of TV-formats where the brand is the only thing that actually can obtain any intellectual property protection with legal means.

With a successful packaging, acceptance on the business arena can be achieved. The industry of trading with TV-formats has obviously accepted the ownership claims from the actors in this market and therefore they have become transferable property. With the creation of acceptance on the business arena the possibility for value extraction from the intellectual assets increases.

Especially in the creative industry where creation of concepts is very common it is crucial to have the understanding of the interplay between the three arenas. Protection of concepts is very much about claiming rights through contracts and to package intellectual assets together with a strong brand that one is eager to protect, to communicate that this is property owned by the company.

# 8 Contractual constructions

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*This chapter explains the importance of the contract as a legal tool in the creation of control over intellectual assets.*

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## 8.1 Introduction

IP within the creative industry is more than the above described IPRs. There are other assets within the industry which are not protected by legal intellectual property constructions.

For all parties involved in the contractual relation to feel benefited from the arrangements, a balanced approach in negotiations is sought for. A win-win situation will enable creativity to flourish and the creator involved will likely be more willing to allow for a further exploitation of the work. For the paying actor this may at a first glance seem as waste of resources but according to the studies done for this thesis creators were more willing to give up their rights as a creator to the paying party's exploitation benefit.

## 8.2 Documentation

To ensure that all relations and activities in the company are a matter of record it is recommendable to establish procedures for documentation. Since a relationship between two actors is a dynamic process between individuals there is always a risk that personal expectations are not counted in when closing a deal. To generate joint consequential experiences the relationship is representing, written contracts should be standard for all activities and companies. The parties involved may be aware of the claims and live by them but if they are formalized in written contracts they can go from abstract, intangible relations to objectified assets.

The actual agreement represents what the parties experience and claim and be used as a tool which both parties internalize in their business. Through contractual agreements the company proprietizes the assets and each agreement where an asset is objectified, the norm of it being proprietary is strengthened. However, before an owner or right's holder will be able to extract value from the intangible he has to exercise at least some control over it.

Drafting and negotiating complex business contracts is difficult. However, written contracts create structures and formalize implicit claims or relations. They are one of the most important tools when building solid relationships. By using them wisely it is more likely to avoid conflicts and unnecessary tensions between important partners since they ensure that there is no (or as little as possible) question regarding the objective with each relation. Specifications in contracts also give parties flexibility because they tell the exact parameters of their freedom in the relation. Parties can thereafter adjust their behaviour and expectations to cope with these limitations.

As mentioned, relationships are dynamic and most often case dependent which means that documentation must reflect the nature and complexity of the relationship. Certain relations may require contractual agreements and some may be documented with merely standard forms. It is advisable that a legal expert is involved in drafting the company's most important deals to ensure that no necessary parts are left out.

## 8.2.1 Maintenance of the contracts

Once agreements are established one can not forget the maintenance of them. It is important that all documents relating to the development of the relationships are maintained so that no new conditions for previous relationships and deals are solely orally closed. Proper documentation also simplifies the involvement of an external party that may need to get insight about the relationship.

## 8.2.2 Binding third parties

Notable in contractual relations is that it is not possible for an actor to contractually bind third parties. Generally actors want to have full control over their contracting parties' possibilities to bind third parties in regards to intellectual assets which are at subject. However, by obliging the contracting party to provide the other party with information about third party's interest the first party can maintain control over the intellectual asset and prevent him from dilute the first parties right to exploit a certain asset and lose control over it. The control is kept indirectly and the first party has a possibility to supervise the exploitation.

Another aspect is since several parties are often engaged in the creative processes, it is important to ensure that the use of the finished work will not imply an infringement on someone else's rights. The project initiator should make sure that all lines of creators have contractually regulated their rights in regards to the project initiator. However, it is nearly impossible to investigate all underlying contracts and it is impossible to be sure that the ones presented are exhaustive. As mentioned it is not possible to bind third parties but there are other ways to ensure avoidance of infringement. By having the other party ensuring that all needed rights are secured in the project, the liability is avoided or at least limited.

# 9 Specific features of the Creative Industry

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*The following chapter presents the specific challenges we have identified that the creative industry is facing. It is based on the interviews and discussions that we have been through and that we have used as a base or how the model should be developed.*

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The interviews and discussion forming the basis for this report have revealed specific features of the industry. The industry is as mentioned growing and there are many challenges and opportunities ahead as it is starting to be recognised as an important part of the knowledge based economy.

## 9.1 Difficulties in defining the IP

Unlike technology based innovations protected by patents it is within the creative industry rare with these easily definable objects and the innovations are often consisting of several intellectual assets combined into one “object”. Because of the mixture of several IP constructions it can be complicated to define the IP involved and what it comprises.

### 9.1.1 Copyright dominance

The difficulties in defining the IP are enhanced by the fact that that the most common IP right involved in this industry is copyright. Copyright is, as mentioned, easy to attain because of its automatic emergence and low demands on artistic height, however it is for the same reason very difficult to define the scope of protection. There is no administrative arena to turn to, to acquire information on the scope and creator, making it an asset of high uncertainty and therefore risky to invest in. The existence of copyright is not formally established until there is a dispute and the matter is settled in court, on the legal arena. The fact that copyright is easy to attain also means that it is hard to claim infringement and there is a wide acceptance concerning inspiration from others work.

There is also lack of understanding of the rights that are included in the copyright, the difference between moral and economic rights for example. Making business is something out of the ordinary for many of the creators in the industry and the legal aspects are even further away from their normal competence.

### 9.1.2 Need for contractual claims

Because of the lack of clearly defined scopes of protection the contract becomes an essential tool to create a control position. Few creators have legislative insight and knowledge about contract law. The lack of competence and understanding in this area often leads to poorly written contracts if any at all. There is a lack of understanding concerning the business arena and the possibilities to claim rights that are not legally regulated. There is a belief in the legal arena, which is somewhat uncertain when it comes to the most essential IP right within the industry, while the business arena is to a large extent completely ignored. This may create extensive lack of equality between business partners and gives strong actors the possibility to claim rights they may not legally have. There is a tendency to be “afraid” of agreements and many apprehend it to be offensive to start a relation with presenting a contract securing the related rights. Whether this is because of a mistrust against lawyers, ignorance regarding the possible negative impacts which may occur without an agreement or just a belief in that

a positive relation in the initial phase will continue to be a positive relation for all times, is left unsaid. What is certain is that the reluctance against contracts has to be overcome and that increased knowledge of the impact is needed.

### Case study – IP relating to an award

To exemplify the problem with the difficulties in defining the involved IP a case study is here presented. The example is an award. In the process of securing the asset and ensuring value extraction for the organisation it is crucial to clarify and regulate the elements related to an award.

#### Involved elements

The elements involved can be:

- Brand
- Physical statuette
- Basis for the prize
- Right to make nominations
- Right to make the final decision
- Location for award ceremony

#### IP Rights

When a mapping of the elements is made the IP rights related to these elements are needed.

The brand can consist of a name, a logotype and a slogan. All of these can achieve protection through trademark rights, registered or established. The logotype can also achieve copyright protection as long as it has artistic height. The physical statuette is protected by copyright and can attain trademark rights as well, if it has been registered as a logotype or established as a mark for the brand.

#### IP through contractual claims

In addition to the IP rights arising in relation to the prize there are contractual claims that should be made to establish an extensive control of the whole concept surrounding the prize.

By stating the basis for the prize, and what is to be awarded, in statutes the control surrounding the prize is increased. It is not possible to protect the idea and motives in themselves, however clear motives simplify the creation of a strong protection for the whole concept with brand, statuette and nominations. The nomination rights are another important aspect where it is important to ensure control. With formally regulated rights to make nominations it is possible to control who will be awarded the prize to some extent, something of big importance in building values into the prize. The right to make the final decision is closely connected to the nomination rights and managing both of them will provide extensive control over the value that is wished to be conveyed with the award. Adding a significant final jury can further increase the value and control. Connecting the award to a special location for award ceremony may further strengthen the concept that is wished to create.

All of these claims should be stated in statutes and/or contracts with all involved parties surrounding the prize to ensure that all claims made are under control.

## 9.1.3 Packaging

It is not enough to secure IP rights or drafting contracts if the knowledge of how to package it is lacking. The studies have shown that if there is an awareness of IP rights, the awareness is often related to only one IP right. The fact that one object can be protected by both several IP rights and contractual claims, ensuring even stronger control, is often missed. The value of using strong brands is

something that most actors understand however, as representatives for the value offers created by packaging assets, they are underrated. Especially when dealing with a dominance of copyright, which can be perceived as fuzzy, it is important to understand the value of packaging all assets into an offer that is apprehended as controlled by the creator.

## 9.2 Complicated ownership structures

When dealing with patents there are registers at the administrative arena to study the scope of the patent and who the inventor is. The process on the administrative arena forces the applicant to be proactive when it comes to keeping track on who has been involved in the creative process due to the demand of stating the inventors. The lack of the administrative arena when it comes to copyright makes it difficult to know who has been involved and who can claim right to the copyright. Since the copyright is automatically arisen there is not process where the creators need to be stated.

What is identified as a major problem in the case studies and what is an all-pervading problem within the creative industry is the arising of very complicated ownership structures. There are often many parts involved in the creative work and it is often difficult to separate what is made by whom.

One major issue to investigate in a creative process is how much influence the inspirer has had on the result. As mentioned the copyright legislation as it is created today does not give any protection to ideas and concepts. The inspirer may have a very clear view on what result is expected from the creative process with clear instruction on what it is to be created. Still for example a manuscript writer, a choreographer, and a music composer may be the actual creators of the work. They will attain copyright to their creative contribution, which may be a co-owned copyright together with the inspirer if his contribution has been large enough to constitute a work. Because of the dynamic process that is often involved in creative work it is difficult to separate the contributions.

The difficulty do define the IP involved and the ownerships issues the IP structures within the creative industries has a tendency to become very messy. Therefore it is of crucial importance to keep control of what parties are involved in the process and to secure rights in all steps of the process. By securing rights to use from the start the problem of defining the scope of copyright and the ownership may be avoided and a much more stable foundation for further development of the concept is built.

## 9.3 Attracting capital

The creative industries consist of a majority of SME's and many are financed, totally or partially, through public funding. This may be enough to keep the business afloat but it is not a secure way of managing business and it does not give incentives to leverage the business to the maximum of its potential.

The private investors are underrepresented in the creative industries and there is reluctance in investing in these kinds of businesses. This may be explained by the fact that the creative industries are rarely included in the networks used by private investors and that the history of public funding has alienated the industry from the market for private investments. Due to this there is a lack of understanding in how to protect the commercial value of the intellectual assets and therefore hard to create and extract value that will attract investors

Legal tools are of crucial importance in creating a control position which is a prerequisite to be able to attract capital. There is a lack of knowledge in the creative industries concerning how to handle intellectual phenomena and the intellectual phenomena that has been accepted by the private investors



is patents, an intellectual property construction uncommon within the creative industry. There is a need to increase the knowledge how to use intellectual assets, create intellectual property out of them to then enable value creation based upon it. Along with internal knowledge there is a need for better communication with investors, an increased understanding of how to communicate the value wished to create. It is not always easy to succeed with concerning tangible assets, and therefore even harder with intangibles. Copyright, the most common IPR involved in the creative industries, might be seen as a fuzzy right making investors more hesitant to take a risk in regards to businesses built on it. Risk taking is natural for investors but the issue does not become financial risk but rather legal risk due to the legal uncertainty of copyright. Copyright is easy to attain but not necessarily easy to enforce.

## 9.4 Identification of the business

The creative industry is, as mentioned supra, to a large extent provided with subsidies and grants and there is a lack of knowledge of how to make a business out of what is created. A major issue in relation to this is the lack of knowledge in identifying the business. Identifying this is crucial in the process of attracting capital and investments to the business. With a well identified and defined value proposition and business model the difficulties in attracting capital to the creative industry can be rectified through better communication between the creators and investors.

### 9.4.1 Identification of the value proposition

When creating a business and developing a product it is important to identify the value proposition. The value proposition is a statement which in short describes what the compelling reason to buy the product is.<sup>32</sup> The value proposition should summarize the customer segment, the competitor targets, the product offering and what the core differentiation of this product is, that is why one should buy it.<sup>33</sup> The value proposition is what describes the value added by the offered product thereby positioning the product or service in comparison with other existing products. According to Moore “positioning is the single largest influence on the buying decision”. Moore also presents how a company just by filling in blanks in a couple of short sentences will have developed a value proposition.<sup>34</sup>

- **For** (target customer)
- **Who are dissatisfied with** (the current market alternative)
- **Our product is a** (new product category)
- **That provides** (key problem-solving capability)
- **Unlike** (the product alternative)
- **We have assembled** (key whole product features for your specific application)

The bullets are focused on technology based companies however, the question at issue that the management is faced with is the same and it should be applicable on companies in any industry.

Companies and markets are constantly subject to changes and competition and running a business is a dynamic process. The value proposition therefore needs to be adjusted and changed accordingly to ensure a good position on the market. However, it is important to make a difference between the value proposition that the company as a whole may stand for, which is important to use consistently, and the different value propositions separate products may have.

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<sup>32</sup> Geoffrey A Moore, *Crossing the Chasm*, p. 195

<sup>33</sup> Ibid, p. 161

<sup>34</sup> Ibid, p. 154

The value proposition concept is a valuable tool in the process of developing the business and new products or services since it forces you to look both internally and externally in drafting a statement that the company will be able to pursue and that is plausible and compelling to your target audience. It is a tool needed in the creative industry to ensure value creation.

## 9.4.2 Identification of the business model/business plan

The business plan is an important tool in communicating the business both internally and externally. A good business plan will make it easier to attract partners and investors, something of great importance in the initial phases of forming a business. From the conducted studies it has become clear that the drafting of a business plan is a difficult process for many of the creative actors due to the big business focus. However, it has also become clear that the more the creators are forced into thinking about the business and how to extract financial value from the creations, the more the maximum potential of the idea becomes clear.

### The value proposition

The value proposition is an important part in the development of a business model. There is no formal definition of what a business model is and the suggestions are many. Osterwalder, Pigneur and Tucci present the following definition:

“A business model is a conceptual tool that contains a big set of elements and their relationships and allows expressing the business logic of a specific firm. It is a description of the value a company offers to one or several segments of customers and of the architecture of the firm and its network of partners for creating, marketing, and delivering this value and relationship capital, to generate profitable and sustainable revenue streams.”<sup>35</sup>

Identifying the value proposition and developing a business plan is the main tools in identifying the business model. A business plan forces to think through the business, what the purpose of the business is, the vision of the company, what it is you will offer, how you will position yourself and how you will create a revenue stream from this. It will ensure that all parties involved in the business are working towards the same goal, both short and long term. The business plan should not be a static document but something that is consistently revised and adjusted for the new opportunities or threats that arise.<sup>36</sup> This is specifically important in the initial phases of forming a business when structures and business models are under development. A well established business does not have the same need for changing the whole business plan but rather changing specific strategies since the business plan and business models are by then well established.

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<sup>35</sup> Osterwalder, Pigneur and Tucci, *Clarifying business models: origins, present, and future of the concept*, Communications of the Association for Information Systems, 2005

<sup>36</sup> Matt Reed, Speech at Chalmers University of Technology, 22<sup>nd</sup> of February 2007

# 10 Significance – Control model

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*From our case studies and investigations of the creative industry we have identified the need for a simple model that in an easy way can visualize the intellectual assets within the company. Presented here is the result of our study; why it is needed, how the development has proceeded, the different parameters and how they are linked together.*

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## 10.1 Introduction

Our research concludes that companies in general are not well aware of what assets they have or how value can effectively be extracted from them. As described in previous sections, companies need to be able to easily grasp their assets' potential. Just knowing that a certain asset exists within the company does not conclude anything about the asset's potential. As we have seen in the case studies and from experience gained about the industry, actors put resources on counterfeiting wrong assets or engage professional contract drafters for negotiations which, in relation to other activities, are not as important.

Another problem is that even if there is an awareness of assets in the companies, actors often have a vague vision about which assets they actually control. Contracts may have been written, but as the case studies displayed these are often defective. One reason for the defectiveness is that they are often written by the parties of the contract without a lawyer present at negotiations or scrutinizing the content of the contract. This leads to an element of uncertainty if the contracts were to be tried on a judicial arena. The contracts may have been written in good faith where the actors believe their wills are preserved but in case of a dispute the outcome may not reflect the parties will at the time the contract was signed.

There are many different models existing today that are used in the companies' organizations to evaluate intangibles' potential for value extraction. The activities and decisions taken at the companies are often similar but to suit the specific company's situation and position the models are tailored to fit the circumstances. However, there are not many models found which easily communicate how the assets are to be used and what they represent, adapted to people who are not fully skilled in intellectual property constructions.

The authors came to the conclusion that the intellectual asset audit model could be explored further and instead of operating as a finished product or service it could serve as a framework to categorize assets as a preparatory step to enable the outcome information to be used as a base for a calculating model. The model developed for the purpose of visualizing assets for companies in the creative industry reflects the aspects which are needed in relation to the specific problems within the field. In a practically applied setting it is adjusted to its purpose and the purpose behind setting up an audit in the first place is included. The authors of this thesis believe that this model will enable successful creative businesses to grow.

The process leading to an understanding that a tool for visualizing the assets interrelation to the companies' vision is needed as a final part of the IA analysis is mostly based on the case studies. It is also based on knowledge gained at the conference Next Stage 2007 in Lillehammer.

## 10.2 The aim of the model

The aim of the model is to visualize a company's current asset situation in regards to the assets significance in reaching the company's set vision. This is set in relation to how much control the company has over the asset. To easily grasp the relation, a matrix is set up to envision the relation.

Most companies will never have a perfectly fit significance-control perspective of their assets but sometimes the effort required in comparison to the benefit possible to achieve of added value and increase in control is underestimated.

## 10.3 When is the model useful

The model should be used in conjunction with an analysis of the most important assets to simplify the understanding of where resources are spent in relation to an asset's importance for the business. However, the model can also be used to get a quick overall picture about an actor's asset situation to get a general view of the situation without a preceding deep analysis of the situation. The values, which are to be used in the calculations, are not complicated per se and as long as one has basic knowledge about IP the model is useful.

The model can also be used if an actor suspects that his IP activities are not matching other activities performed in order to meet the business' objective. Before deciding how to invest resources to remedy the suspected miss match in activities one can use the model to get an overall picture prior to a deep analysis of each asset.

The model is foremost suitable in a short-term perspective since it is supposed to visualize where the companies' assets *currently* are. It indicates where primary intervention should be done rather than an exact situation analysis. Even though a company does not have total control over an asset, it does not automatically mean that they should give it immediate priority to secure control.

The tool is also to be seen as a particularly useful approach to directing improvement in resource allocations from the companies because it explicitly includes both the major parameters such as control over a certain asset, and significance for reaching the vision which forces the actors to reflect upon their actual vision and which are the assets needed to reach that goal.

## 10.4 The initially developed model

The model initially developed by the authors covered an asset's *importance* for the company (later changed to an asset's significance for reaching the vision) and what *control* an actor had over it. The problem was that the control parameter was somewhat diffuse since it covered both the "ownership" element and the IP element, however primarily related to the IP protection of the asset. There were some difficulties with calculating/deciding the control value since no clear method for the control evaluation existed. The model was dependent on that the analyst had more extensive knowledge about IP in comparison to the latter model. It was also more sensitive to the analysts' subjectivity of how control over an asset is established. Once the two elements of IP protection and ownership were separated the pre-calculation method to find a fair calculation method was developed which showed a better value in regards to the control.

Eventually a method for the control aspect grew where both ownership and IP Protection was represented. The part that set spanner into the work was the IP protection calculation method. The aim was to set up five criteria for all IP protections possible e.g. 5 criteria for how strong an asset's

protection was in regards to the copyright, 5 criteria for how strong an asset's protection was in regards to the trademark etc. It was found impossible at the prevailing stage to come up with five exact criteria that covered all possible forms of protection for IP. An impending risk was that the list was seen as exhaustive, which in relation to some IP construction could have been true, but creative IP protection constructions would cause puzzlement to someone who promptly uses the listed criteria.

The calculation was to be conducted in an identical way as with the current model, one value for the control aspect and one for the importance aspect. The main difference was the model's appearance which in turn resulted in a whole different analytical method due to the different zones in the model. The preceding model was, just as the current model, divided into four areas. The main difference was the size and position of these areas. Due to the size of the areas, the information gained for an asset was poor and a following analysis of each of these areas was needed. Depending on where in the area the asset ended up its situation could be very different than the remaining even though it was within the same area. Assets in one top corner of an area required different approaches than assets in the opposite corner in the same area.

An area of recommended positioning for the assets was drawn diagonally in the matrix (indicated red in figure 3). In relation to the specific areas in the model it was an assisting component in the matrix but since the rest of the values were to some extent misleading the assisting recommended positioning did not serve its full purpose. The green area represents the zones where the assets should end up being in the "safe" zone. As mentioned by having 50 percent of the matrix being a "safe" zone it was doomed to show misleading digits and values.

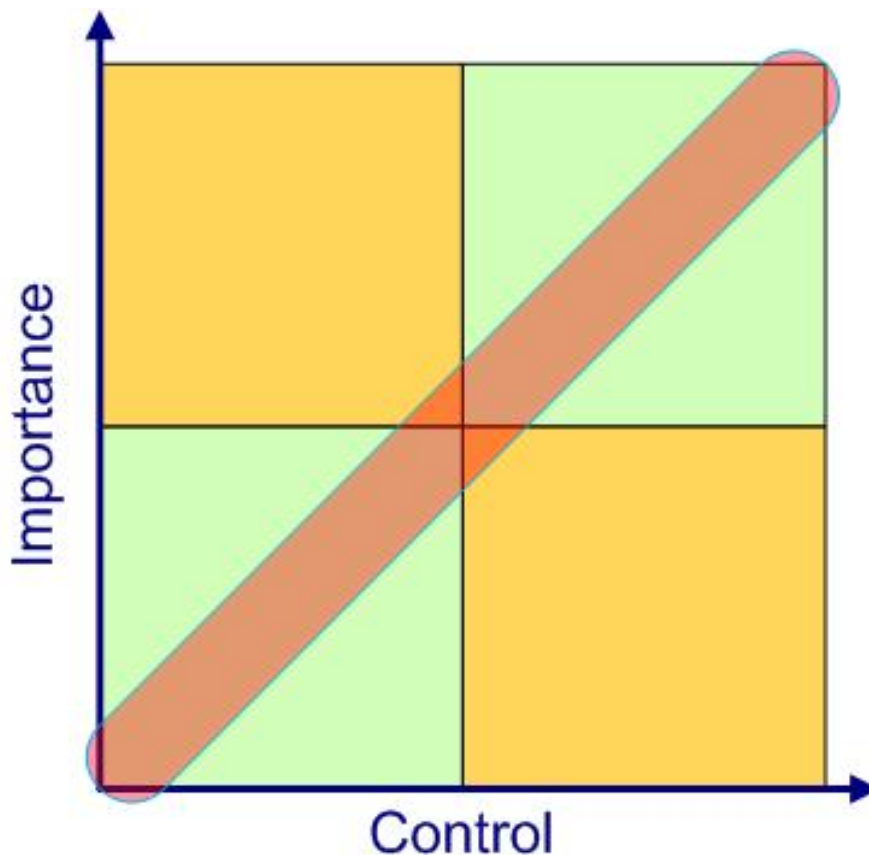


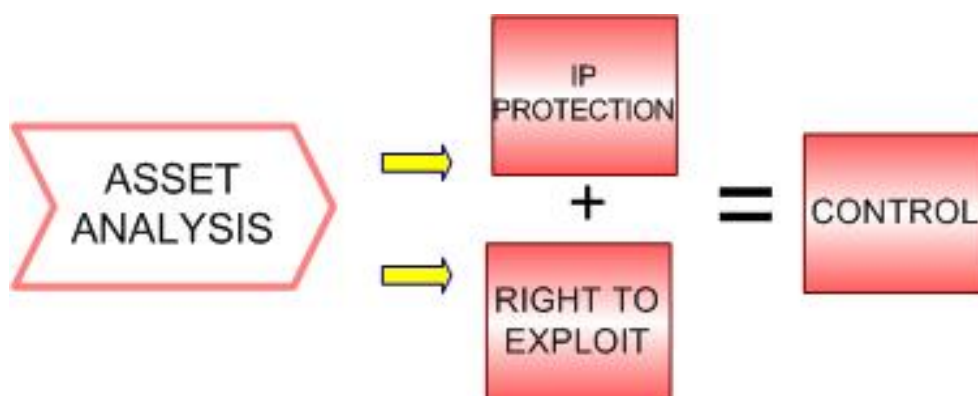
Figure 3 The initially developed Model

## 10.5 The Parameters

To set the relevant parameters which would in the most suitable way bring out the problem as well as offer a solution required extensive work. Several trials were made with various elements representing the two parameters before deciding upon which were to be used. The reason why these exact parameters was found best for the purpose was that they in a best possible way, relating to the author's prerequisites, represented what the matrix was supposed to envision.

### 10.5.1 The "Control"- parameter

The control aspect over a certain asset is the basic feature for an actor to at all be able to extract value of an asset. However, to merely use the control concept as a parameter does not point out all aspects needed to grasp the control concept. Initially one of the parameters in the matrix was IP protection solely, without the control aspect. The problem was that the solution did not represent what the aim with a visualization tool was since there was no representation as to *who* could exploit the asset, regardless if there was an existing protection or not. Therefore, the control concept builds on several elements wherefore it is divided into two separate main aspects; "IP Protection" and "Right to exploit". An existing IP protection and an actor's right to exploit a certain asset are the most significant factors to gain control over an asset.



**Figure 4 A preceding asset analysis enables a more accurate evaluation of the elements IP Protection and Rights to exploit, which in conjunction equals to control.**

### IP Protection

The IP Protection evaluation is the most difficult judgement. The most obvious protections, such as registered trademarks, are fairly simple to evaluate but as soon as the protection becomes fuzzier e.g. evaluation of established trademarks the judgement is no longer self evident.

As the name suggests the imperative element should be IP protection. What was discovered in the development process though was that some claims could be considered as being protected even though they were not protected through the general means of propertization but rather through an established *claim* and *acceptance* on the business arena. By making claims based on agreements, market power and other business means, IP can be constructed and validated on the business arena. As mentioned in the section about the three arenas a claim on the business arena may not necessarily be accepted on the judicial arena, meaning that in the event of a court preceding the outcome is uncertain. On the other

hand the model is a situation analysis and based on the current prerequisites indicating that future events are not calculated upon in the evaluation.

The levels in the scale are to some extent overlapping and to an outsider the evaluation may seem ad hoc. However, the fact that an evaluating actor must have fully understood the three arenas is evident when it comes to setting values for the assets in the model. This confirms the authors' theory that a person with extensive knowledge about IP and the interacting game on the three arenas is the most suited for using the model as an evaluation tool.

The scale runs from 0-5 where the digits represent:

0 – No protection

1 – Weak IP or IPR *or* weak acceptance on the business arena

2 – Somewhat stronger IP or IPR *and* some acceptance on the business arena

3 – IP or IPR *or* acceptance on the business arena

4 – IP or IPR *and* acceptance on the business arena

5 – Strong IP or IPR *and* high acceptance on the business arena

## Right to Exploit

Knowing that there exists IP protection relating to a certain asset is not enough to gain control, *who* it is that has the right to exploit the asset is equally important. The right to exploit element is, in a simple way of saying it, regulation about “ownership” to a certain asset. The main message “ownership” and IP communicates is what people are *not* allowed to do, giving a negative tone. There needs to be a more positive vibe stemming from ownerships structures in regards to IP. By using terms such as “right to exploit” not only does it open up for a wider interpretation but foremost it removes some of the negative tone. Moreover, “ownership” to a certain asset or property limits the scope for how an actor can exploit the asset and the authors see a broader possibility to extract value from assets than merely through ownership structures. Therefore the term “right to exploit” has been adapted to the model to indicate an actor's right to act in relation to a certain asset. The communicative basis is that a “right” to something should be seen as a legally enforceable power of free action, which preferably can be upheld in the judicial arena.

The right to exploit includes, but is not limited by, the right to own, use and or exclude others from exploiting the asset.

There are many different constructions in regards to what possibility an actor has to exploit an asset. To avoid limiting the evaluator by giving exact elements to count in when estimate someone's right to exploit an asset, the exact parameters are not exemplified in the model.

## 10.5.2 The “Significance for reaching the vision”-parameter

Since one parameter was set to represent the control-aspect of a certain asset, the issue that would balance the aim with what the model was to represent had to deal with where the company want to be positioned in the future in regards to that specific asset. This is how the vision of the company is connected to the model. The vision is well connected to the development of the model and is an important part of how the model is to be used. As described earlier the vision should be the base concept for the organization in the company to follow. Reaching the visions require actions from the management however, it is the ideas behind the vision that must come to fruition. To come to fruition the company must have assets to exploit and extract value from.

A problem, which has been evident through the case studies, is that the companies do not know *how* these assets are interrelating with the vision they have set. The vision is often set without precise knowledge about the assets and the ownership structures behind them.

Once the vision is clear to the company they must link this to the assets they have, or think they have. All assets, which could be of importance for the company to reach the set vision, should be listed for further analysis to reach a conclusion regarding their importance to reach that vision. To decide which assets in a company is the most important is a complex issue for the management to deal with, but it is needed. It is not optimal to work with *all* existing assets since there is no optimization of assets if there is no analysis prevailing the focus decision.

### 10.5.3 Linking the two parameters

Once the assets in a company are analyzed and there is a vision outlined to use as a reference measure, there is an interest in finding out the assets relation, not only to each other but also to the set vision and the amount of control the company has over them. The purpose is to expose if an optimal allocation of resources is currently done at the company.

To calculate control values for an asset will not solely help the company to optimize their assets. Not until the aspect is related to the asset's significance to reach the vision the full value extraction of the key assets can be exposed. The aim of linking the two parameters is also to start a reflective process in the company's organization about the importance of how the vision is conformed to their activities.

## 10.6 Sensitivity to a change of vision

The result presented in the model once it is used, is to be seen as current situation analysis adjusted after the set vision. The asset analysis and the control-significance model are to a certain extent sensitive to a change in vision. The control aspect may possibly change since the asset analysis is somewhat reflecting the company's aim with its vision. The asset analysis may be done differently from another set vision but in the end the calculation will not dramatically change.

The point with using the tool in an analysis is not to make an evaluation once and then follow its outcome for the rest of the business' life. Considering the dynamic processes that companies are constantly exposed to, especially within the creative industry, it is of utter significance that the user regularly evaluates if the values that represent a certain asset remain the same over time.

### 10.6.1 Is the set vision realistic

The control- significance model is also a useful tool to evaluate if the set vision is realistic or not in relation to the assets the company has at hands. When all assets are analyzed and the calculation of the control is done as well as the evaluation of its importance in relation to the vision, the summary model with all assets presented in a matrix will give a hint if the vision is realistic or not.

The model will also indicate if the set vision is relevant when taking into consideration what assets that can enable the company to reach the set vision. The model can thus be used as a mean to create awareness if the vision which is set corresponds to the assets which are secured and/or propertized. If not, an evaluation should be done if it is the vision which should be changed rather than resources being reallocated to create control over assets.



## 10.7 The data in the matrix

The information and data collected during the analysis of the company's assets is the "raw material" which is analyzed and interpreted into codes representing certain digits. The digits are denominations which are set based on all information obtained about the asset in terms of e.g. ownership, contracts involved regulating ownership, existing IP and IPRs and information existing surrounding the asset. To use as correct information as possible close collaboration between the asset analyst and the company's management organization is needed.

## 10.8 Understanding the matrix

Inspiration to the matrix is partly taken from a book about operations strategies.<sup>37</sup> The context where that author applies his version of the matrix is use of it as a tool to direct operations improvement at a company. The parameters used are "Performance against competitors" and "Importance for customers". This also implies that the matrix itself is very generic in its design and can be used to visualize a variety of information. However, with the right adjustments it becomes a very specific tool to serve the author's purpose by further developing and altering the matrix.

The priority for improvement which each asset should be given can be assessed by the comparison of the asset's significance for the company to reach their vision in relation to the control the company has over the specific asset. This is shown in the significance- control matrix where the significance and control parameters, described in the section above, have to be viewed jointly in order for the company to see value in using the model. The parameters are judged by using a five- point scale. The matrix is divided into parts signifying zones where the company may need to act to improve the status of a certain asset.

The main boundary is the A-B-line which divides the matrix into two major halves. Roughly this line is to signify the boundary between an acceptable an unacceptable situation and performances from the company's side. When an asset's significance for the company's vision is rated low, i.e. rather unimportant, it is perfectly fine to have little control over the asset. However, as soon as an assets importance for the company increases, so must the control over it. Not all assets falling below the minimum line should be seen equally and the degree of improvement priority will differ.

A boundary approximately represented by the line dividing the "improve" and "action required" zone correspond to a zone which should be urgently prioritized and a less urgent improvement zone. In the same way there is an area under the A-B line separated into two zones by a boundary where one zone is indicating that performance levels are "adequate" or regarded as "good" in relation to what the vision is stating. In the other zone the performance levels are "too good" and excessive resources may have been put in it in relation to the significance of the asset. Dividing the matrix in the just described way will result in four zones. These zones will visualize the assets' status in the company and imply four different approaches of amendment to reach the desired harmonization in resources versus importance.

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<sup>37</sup> Slack, Nigel and Lewis, Michael, *Operations Strategy*

## 10.9 The zones<sup>38</sup>

When the zones were set the driving motive was that the zones and their significance had to be easily communicated to whoever will use it. Too many models are inconvenient in their usage due to complicated boundaries. The 4 zones are meant to be easy understandable and clear in their purpose. The zones are not scientifically tested and the model is still in a developing stage. However, the zones are satisfactorily developed to serve its purpose, visualization of IPRs.

The areas which are signifying the zones are carefully adjusted and readjusted to fit into uncovering the effects assets have for actors within the creative industry. The matrix will have to be redesigned to fit another purpose, even if the general look is the same as originally.

The following section will present each zone and its purpose in more detail.

### 10.9.1 The “Adequate” zone

The adequate zone is the area where the companies to a certain extent have enough control over their assets in relation to their importance. The A-B-line setting the borders between “adequate” and “improve” zones is to be seen as a boundary to work towards.

The whole zone should not be seen as a measurement of an ideal area to place the assets since the matrix illustrates a situation based analysis. However, it is far better if the assets are within the “adequate” area than the “improve” area. The assets which lie close to the A-B-line most likely do not pose a risk to the company’s future but the line should still be seen as the “ideal” measure to work towards even for the assets in the “adequate” area. However, since a company’s life is dynamic and the activities are circumstances are changing, the zone’s indications are very situation specific. Therefore the assets positioning in terms of resources spent is to be seen as set from a short term perspective. From a long term perspective the companies should allocate their resources so the most significant assets are also the ones which the company has the strongest control over, i.e. end up in the top right corner of the “adequate” zone.

### 10.9.2 The “Improve” zone

The assets that lie above the A-B-line end up in the “improve” zone. Any assets which end up above the line are candidates for improvement. In the long run these assets’ position should be strengthened since their importance for the company is not to be neglected. The assets that lie just above the line or in the left part of the zone are assets which are likely to be viewed as non-urgent cases. The amount of control over these assets is poor but their importance to reach the vision is limited and therefore these should not have priority for improvement.

### 10.9.3 The “Action Required” zone

The assets that end up in the “action required” zone are the ones that the companies should prioritize when it comes to changing the assets’ structure. Actions are required immediately to strengthen the control. If no immediate improvement over the control of these assets is undertaken the company may have difficulties in reaching their vision and in the end resulting in losses for the company. Not having control over important assets also puts the company’s current position in risk. If the company is currently relying on those important assets without having satisfactory control over them it may jeopardize the company’s current position as much as its ability to reach its vision. On a short term

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<sup>38</sup> Slack, Nigel and Lewis, Michael, *Operations Strategy*

basis the assets in the zone be of highest priority and primarily be secured and strengthened to at least end up in the “improve” zone but preferably as close to the A-B-line as possible.

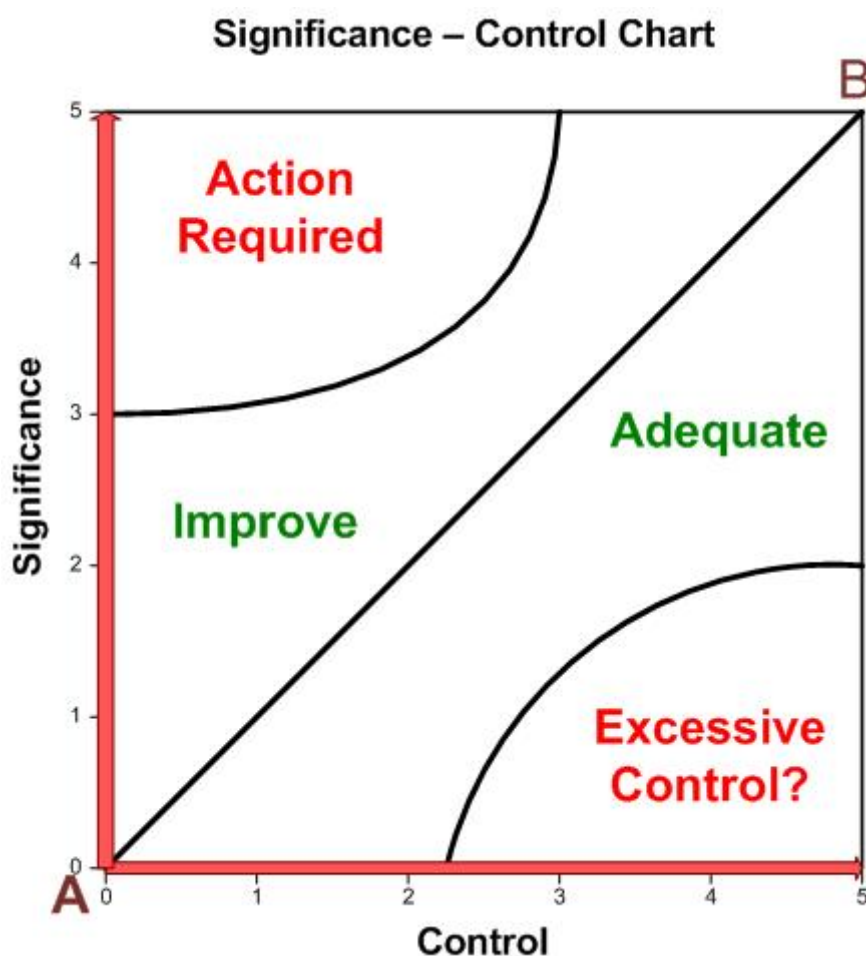


Figure 5 Clarifying the zones

### 10.9.4 The “Excessive Control?” zone

The assets that end up in this zone *may* be excessively controlled in relation to the company’s vision. The emphasis lies on *may* since the resources that actually are spent on an asset making it end up in the field vary. An example illustrating this is copyright protection which arises automatically and thereby may give a strong protection without excessive (or any at all for that matter) resources invested to obtain a strong protection. This can influence the data in the calculation resulting in a high digit for the control axis, which explains the *may* aspect discussed supra. On the other hand there is no need to protect assets which are of little importance for the company in reaching their vision. Many of the intellectual assets and properties are cheap to maintain meaning that it is preferable to have too much control rather than too little control over the assets. However, there is no need to maintain assets that are of little interest and therefore the assets ending up in the excessive control zone should be evaluated as well to ensure proper resource allocation.

An asset or property may be of high value and have high potential in commercialisation. However, if the asset is not something within the core business of the company and not important for reaching the vision it should end up in this field enforcing the company to act. This does not mean that the asset or property should be dropped and thrown away. There are ways to handle the situation ensuring value extraction from these assets in other ways than creating a product for the company. The asset could be packaged into a saleable product or licensed to other actors which are more suitable to exploit it. This ensures a proper intellectual asset management increasing the possibilities to extract value from all existing intellectual assets within the company.

## 10.10 The model-the calculation

The following section aims at explaining the practical measures of the model.

### 10.10.1 IP Protection

The values which represent IP protection are based on whether there is an existing IP Protection or not and it is not dependent on the holder of the protection. If protection is considered existing, an **X** is marked in the calculation sheet (the cell matrix) on the type of protection that is covering the asset (see Figure 6). To indicate where a protection *could be* possible to obtain, a slash sign (\) is marked in the calculation sheet. The purpose with using a slash sign (\) is to bring out an understanding about which protection forms are possible to make, but which currently are not protecting the specific asset.

The marking itself (the X) in the calculation sheet (the cell matrix) (Figure 6) does not signify how strong the protection is in each category is. The strength of the IP is the digit of a combined evaluation of existing IP protection based on the information gathered by the conclusion of the analysis of the asset. Some of the assets are subject to a cluster analysis and multiple factors play a role to reach a code.

The scale runs from 0-5 where the digits represent the levels:

- 0 – No protection
- 1 – Weak IP or IPR *or* weak acceptance on the business arena
- 2 – Somewhat stronger IP or IPR *and* some acceptance on the business arena
- 3 – IP or IPR *or* acceptance on the business arena
- 4 – IP or IPR *and* acceptance on the business arena
- 5 – Strong IP or IPR *and* high acceptance on the business arena

### 10.10.2 Right to Exploit

There are many different constructions in regards to what possibility an actor has to exploit an asset. To avoid limiting the evaluator by giving exact elements to count in when estimate someone's right to exploit an asset, the exact parameters are not exemplified in the model. Instead a scale of 0-5 is used where each grade is represented by a digit. The digits are tested to fit into the model and there is a leap in the initial value to enter the scale since the difference from 1 to 5 is of more continuous character.

Scale 1-5 where:

- 0 = No right to exploit
- 5 = Full right to exploit

Digits represented by the levels in the scale:

0 = 0  
1 = 0,5  
2 = 0,625  
3 = 0,75  
4 = 0,875  
5 = 1

The evaluation is dependent on knowledge about different ownership and licensing structures. Basic legal IP understanding uncovers some of the structures which could be present as well. However, for a person who is not well familiar with ownership, legal and licensing structures a couple of questions which can be asked to guide a this person into the correct digit are:

- Are others prevented from performing certain acts e.g. make, use or sell, which are stemming from your asset?
- How long will you be able to use the asset exclusively?
- Are there any legal implications limiting the right to exploit?
- Does anyone have to approve your usage?
- Are there any employee contracts or legal implications hindering the organization's right to (exclusively) exploit the asset?
- Is there a need for several actors' approval i.e. is there several creators to the asset?

### 10.10.3 Control

The control calculation does not involve any evaluation element. The control value is the combined value from the first evaluation of the combined IP protection value, which is multiplied with the value concluded in the second evaluation, the right to exploit, to present a digit. This digit is the one which denote the x-axis value in the matrix. The calculation presents a measure of how much control the company has over a certain asset.



### 10.10.4 Significance for reaching the vision

The y-axis parameter is determined by how dependent the company is on the actual asset to reach the company's vision, i.e. the asset's "significance for reaching the vision".

All assets which are to be included in the analysis must be evaluated by the companies according to their importance and be graded from 0-5. If an external consultant is conducting the asset analysis and/or using the model, he should grade the asset's significance, independently from the company's grading, based on the information he has gained. The company's evaluation should then be compared to the external consultant's evaluation to see if they match. As concluded earlier in the thesis, companies are not perfectly aware of which assets they have at their disposal or how valuable they are for the company's future. By having the importance-interpretation performed independently by an

external actor the company organization have a better chance to become aware of their misinterpretation of assets' importance for the company's future.

The interpretation is an estimation but on the other hand the levels of the scale are not complicated and the point is that a full business analysis should not be needed. The core element is simplicity and with the levels set the estimation element is tenable.

The scale runs from 0-5 where the digits represent the levels:

- 0 – Not important
- 1 – Not likely important
- 2 – Possibly important
- 3 – Partially important
- 4 – Important
- 5 – Crucial

### 10.10.5 Example of the model

Asset	TM	CR	Design	Domain	Concept	Contract	IP- Protection	Right to exploit	Control SFV	
									Control	SFV
a) Trade name	X			X			1	3 (0,75)	0,75	5
b) Play	X	X				\	4	3 (0,75)	3	3
c) Relation						X	3	5 (1)	3	4
d) Prize	X	X	X		X	X	4	5 (1)	4	1

Figure 6 Example of a calculation sheet

### Control – Significance Chart

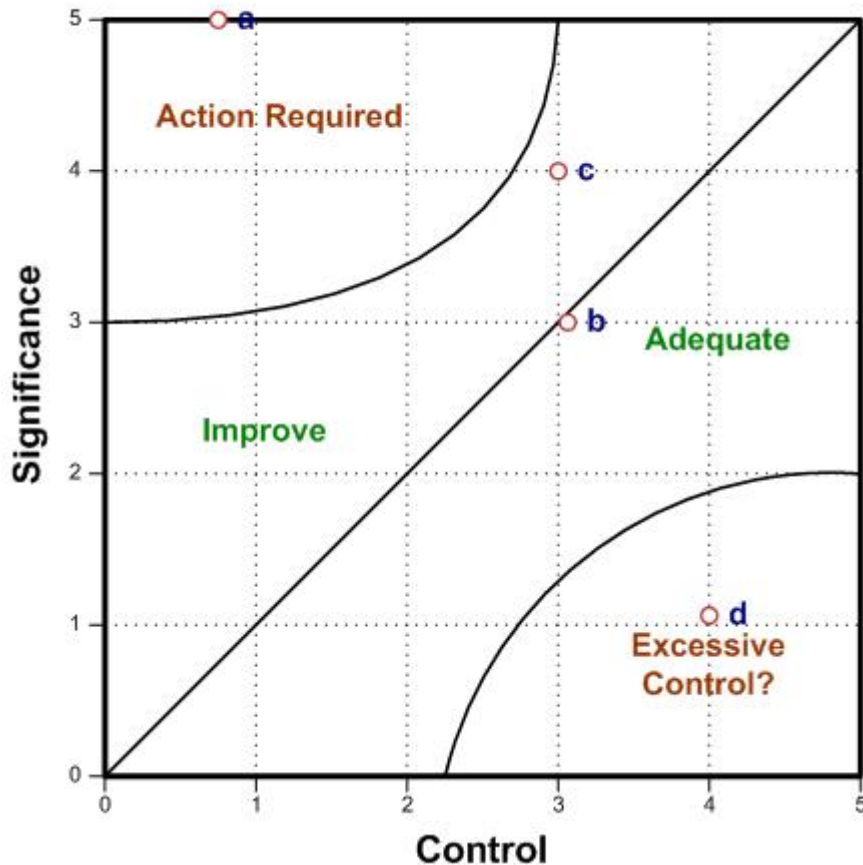


Figure 7 Example of model with data

## 10.11 Weaknesses

Since the model is still on a fairly early stage there are weaknesses which are not yet overcome as well as important aspects which the model does not take into account. The elements of weakness are not presented in relative order of importance.

- **Validation**

The current largest weakness is the fact that the model has not been used on many cases and is thereby not yet fully validated. Even if it has shown to be effective in a few cases it is not tested enough to with certainty claim it to be the best tool for its purpose. However, from an asset analysis and company vision perspective the most important aspects are still taken into consideration and accounted for in the calculations, signifying it to be a good base for further development and improvement.

- **Element of estimation**

Even though there is a calculation model set to follow the model it still has an element of estimation specifically in regards to the IP protection evaluation. This leads to possible questioning whether the model is truly objective. The more objective values, the better the tool. However, since the model is not made to be exact science the need for true objectivity is not major.

- **Further analysis is needed**

The model does not take into consideration exactly which assets the company should start strengthening in relation to each other. The control/significance perspective for each asset is only partly in relation to one another. When the “calculation” is done and the values are imported into the matrix the result does not show in *which order* the assets in the zones where the companies must improve or act upon, should be taken care of. Even if an asset is theoretically closer to the “ideal” position (AB-line) than another, the first may be in need of more urgent improvement than the one which at first sight looks “worse”, due to external circumstances e.g. other competitors’ threats. More competitors could mean more that more resources are needed to counterfeit and/or overtake the competitors. To avoid resources spent on wrong assets local analyses on an individual level of the assets must follow once the model has visualized the positioning of the assets. This will further illustrate which assets carries the greatest risks to e.g. be invalidated or be infringed upon.

- **Only applicable to certain assets**

As the model is designed today it is only applicable to assets whose optimal stage is becoming properties i.e. obtain IP protection. Assets which have low IP protection i.e. are far away from being either legally protected or by other means reified as being properties, automatically receive a low value in the calculation. Notable though is that it is not always most favourable for an asset to become properties to extract value. The model also presupposes that the optimal situation for an asset is high significance and high control positioning, which may not always be an option due to certain circumstances.

- **Changing legal framework**

The model does not take into consideration the situation where the legal framework changes in society and thereby changing the status of positioning for an asset.

- **Demands knowledge in IP to determine the IP protection**

The difficulties in evaluating whether the asset has protection or not makes the model somewhat unpractical to use for people who have little or no knowledge about IP. In order for the judgement to be as accurate and realistic as possible the recommendation is that an expert in IP should do the evaluation. The model is not very well adjusted to analysts without extensive knowledge in IP and IPRs. This sets certain limits to the usage friendliness of the whole model since wrong calculations in



the model will present incorrect figures. With a better developed or more precise scale for interpretations of the different IP protection available the model could have a more extensive group of people using it. On the other hand, as mentioned in the IP Protection section supra, listed possible IP protection structures could instead be limiting to creative IP protection structures and diminish the model's purpose.

- **Lack of business development knowledge with the analyst**

The interpretation of an asset's significance in relation to the company's vision is as mentioned estimation. It is not certain that an external IP analyst has expert knowledge in business development and has a suitable background to make exact predictions about asset's significance in relation to the business development. However, the point is not to have a scientifically correct value but rather to start a dialogue and jointly come to the conclusion about asset's importance.

# 11 Conclusion

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*This final chapter of the thesis presents a short conclusion of how actors in the creative industry can benefit from a better visualization tool giving them an oversight of their most important assets and IPRs.*

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Our research concludes that companies in general and actors within the creative industry specifically, are not well aware of what assets they have or how value can effectively be extracted from them. The creative industry is an important part of the growing knowledge based economy and the past years the major role it has played in this new context is becoming increasingly recognised

As described in previous sections, companies need to be able to easily grasp their assets' potential. Just knowing that a certain asset exists within the company does not conclude anything about the asset's potential. As seen in the case studies and from experience gained about the industry, actors spend resources protecting certain assets not because they are the most important ones but because they are the ones they understand. To a large part this was due to lack of understanding of the legal structures of IPR. However, the underlying problems of understanding IP in the creative industry have been other than of pure legal character. Unlike technology based innovations protected by patents, it is within the creative industry rare with easily definable objects since the innovations often consist of several intellectual assets combined into one "object". Another identified problematic part for the industry was the arising of very complicated ownership structures since often many parts are involved in the creative work and it is hard to separate what is made by whom. The complexity of the work created in the industry makes it difficult for an actor to really know what assets he has control over and which he can further exploit in his business.

The conclusion drawn from the lack of understanding of IP is that the creative industry was in need of a simple model that in an easy way could visualize the intellectual assets within the company; i.e. the Control-Significance model. The tool visualizes the assets' status in the company and is highly communicative. It helps the company to understand what control position they have in relation to their assets. The aim with the model was also to remove parts of the sometimes envisioned complexity of IP and IPRs the companies felt. From the companies perspective the benefit with applying the model on their assets is that the better the knowledge they get about the assets' strength in the company, the better chance they will have to conclude more accurate strategic decisions for the company's envisioned future.

An analysis of the assets is needed prior to the calculation and the model should be seen as a complementary assistance and/or as a final part of an intellectual asset analysis which requires knowledge about intellectual phenomena. The fact that an evaluating actor must have fully understood the three arenas is evident when it comes to setting the values for the assets. This confirms the author's theory that a person with extensive knowledge about IP and the interacting game on the three arenas is the most suited for using the model as an evaluation tool. However, by pointing out the specific problems within the industry and with some knowledge about IPRs, the companies may be able to analyse the assets themselves and thereafter apply the results to the model.

Due to the low number of case studies the authors do not claim to have obtained a complete picture of the challenges and opportunities within the industry. Most certainly there are issues that have been missed in the development process, such as the ones described in section 10.11. There is a need for further research in the field of the creative industry and its specific issues. With the growth of the industry and the economic values it represents it is important that sustainable structures are created

and that the knowledge about IP and intellectual assets management is increased. However, the conclusion is that the main areas of problems are captured within this thesis and that the tool developed can aid the industry in facing these problems.

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## 12.5 Attended Seminars

Next Stage 2007, Lillehammer Norway, 13th -14th of February

Matt Reed, Speech at Chalmers University of Technology, 22<sup>nd</sup> of February 2007

