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# To trademark or not to trademark: The case of the creative and cultural industries

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## ABSTRACT

Research on the use of trademarks by innovating companies is growing. Yet, large research gaps exist in our understanding of the use of trademarks beyond manufacturing and beyond specific service sectors. This study focuses on the creative and cultural industries (CCIs) and argues that these industries represent a salient case to advance research on trademarks. After reviewing the main characteristics of CCIs, a conceptual framework is developed to classify motives to trademark and motives not to trademark for firms in these industries. The paper offers original empirical evidence on the relevance of these motives from survey results on a sample of 486 European firms in five selected CCIs.

Results from principal component analysis are used to propose a taxonomy of firms with specific attitudes and strategies towards trademarking. All results are discussed in terms of their implications for using trademarks as the basis for novel economic indicators of product variety and innovation.

## 1. Introduction

Worldwide, trademark applications are on the rise (WIPO, 2013). This trend can be explained in at least three ways: economic growth has gone hand in hand with an increasing demand for product variety resulting in more new companies and new products in the marketplace (WIPO, 2004) and in their increased reliance on symbols as persuasion tools (Ramello and Silva, 2006; Mendonça, 2014), the increasing competitiveness of service and creative sectors has promoted even further the use of Intellectual Property Rights (IPRs) other than patents to protect non technological forms of innovation (Stoneman, 2010; Flikkema et al., 2014), and the ‘ICT revolution’ has influenced in many ways the demand for trademarks, for instance by spurring the need to build reputational value in digital marketplaces with increased distance between sellers and buyers (Smith, 2011) and by stimulating increases in product variety (Gao and Hitt, 2012).

Despite all this, the bias of economic studies towards technological and functional innovations has resulted in a bias of empirical research towards patents (Stoneman, 2010; Mendonça, 2014), while economic research using trademarks is still rather limited (Schautschick and Greenhalgh, 2016). This is at odds with the evidence that trademarks are the most widely used intellectual property right across different economic sectors and firm sizes, also in the case of innovative companies (Blind et al., 2003; WIPO, 2013). As the literature review in this paper will show, most studies that have investigated the use of trademarks by companies focus on the complementary role of trademarks vis-

à-vis patents (Sandner and Block, 2011; Zhou et al., 2016) and primarily concern manufacturing sectors. The available studies suggest that the use of trademarks differs substantially across sectors, both in terms of intensity and in terms of motives and practices. This study takes up the challenge of broadening our understanding of the latter in sectors that have not been investigated so far. Understanding the motives behind trademark registration is crucial for at least two purposes. Firstly, motives help to interpret the patterns of trademark filings (Block et al., 2015). Secondly, motives to trademark provide insights into the possibilities to use trademark data to measure specific economic variables, including diversification (Castaldi and Giarratana, 2018), product variety (Stoneman, 2010; Gao and Hitt, 2012) and innovativeness (Mendonça et al., 2004).

While there is a handful of studies focusing on the use of trademarks in knowledge-intensive business services (KIBS) (Schmoch and Gauch, 2009), an under-researched case is the one of the creative and cultural industries (CCIs). These industries are particularly interesting when investigating the motives to trademark for at least three reasons. First, Stoneman (2010) convincingly suggested that trademarks can help to uncover ‘soft innovation’, namely aesthetic and intellectual forms of innovation, increasingly important in the ‘semiotic struggle’ that defines modern symbol-based market competition (Mendonça, 2014). Soft innovations are even more central in CCIs, whose main output is creative or cultural in its very nature. As innovations in CCIs are less likely to have a technological or functional nature, patents tend to have a marginal role in most of these sectors. Second, in one of the

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definitions, i.e. the World Intellectual Property Organization (WIPO) copyright model (WIPO, 2004), CCIIs are identified as the copyright-intensive industries (UNCTAD, 2010). Yet, copyrights concern the artistic component of CCIIs, rather than their commercial component. In their role of integrating “art and commerce” (Caves, 2000), companies in the CCIIs can rely on trademarks to flag their market offerings and persuade consumers of the value of their output, also in a broader cultural economic sense (Sanz, 2015). Third, the economic significance of CCIIs and their innovative potential are growing (Cunningham, 2013; UK DCMS, 2015), thereby appropriability questions are expected to become more stringent for these companies. In CCIIs witnessing maturing trends there is an increasing focus on acquiring intellectual property due to a shift towards rationalized production processes and away from serendipitous creative processes (see the case of the video games industry in Tschang, 2007).

To advance research on trademarks, this study aims at investigating the motives to trademark or not to trademark for companies active in the CCIIs. To this end, this study develops a conceptual framework bridging insights from research on trademarks and research on CCIIs. The study also offers original empirical evidence from a sample of 486 companies in selected CCIIs in the United Kingdom (UK), Germany and the Netherlands. The empirical results are used to construct a taxonomy of patterns of trademark use and non-use.

Section 2 discusses prior theoretical and empirical research on trademarks and on CCIIs. Section 3 explains the research design of the empirical study and Section 4 presents the key empirical results and the proposed taxonomy. The last section offers concluding remarks and reflects on the insights for policy and innovation research.

## 2. Literature review

### 2.1. Research on the use of trademarks by companies

According to the official definition of the World Intellectual Property Organization (WIPO), a trademark is “any sign that individualizes the goods of a given enterprise and distinguishes them from the goods of its competitors.” (WIPO, 2004, Ch. 2 p. 54) Thereby, trademarks fulfill two complementary roles. The first one is an identification role: they indicate the origin of a product. The second one is a differentiation role: they distinguish a good from that offered by other entities in a given market. A trademark owner has the exclusive right and also the obligation to use it in the market. Trademarks solve the typical information asymmetries present in markets (WIPO, 2013) and fulfill a signaling function (Ramello, 2006). Business history research has unraveled the processes through which trademarks turn into brands that determine the long-term fates of companies (da Silva Lopes and Duguid, 2010).

Schauschick and Greenhalgh (2016) offer a comprehensive review of the empirical studies in economics using trademarks. Most studies have found evidence of significant private returns from trademarks in different samples of firms and with different ways to capture economic benefits at the firm level (i.e. market value, productivity and survival studies). This econometric evidence does not shed light on the reasons why these private returns are obtained. Complementary insights can be obtained by turning to studies within related disciplines, such as: (i) innovation studies, (ii) strategic management, (iii) marketing and (iv) entrepreneurship.

Within innovation studies, two research strands are relevant here. The first one concerns studies on the appropriability strategies of innovative companies. Most studies stress that such strategies are sector-specific and Blind et al. (2003) suggest that trademarks should be most used in sectors characterized by non codifiable intangibles. Thomä and Bizer (2013) find that trademarks are used by innovative small and medium-sized enterprises (SMEs) in sectors characterized by non-price competition, where distinctiveness of product offerings is important. Amara et al. (2008) focus instead on KIBS and find that trademarks are

complementary to patents and copyrights in protecting inventions. The second research strand is the emerging literature on trademarks as indicators of innovation. Trademarks are found able to capture innovations in later stages of the innovation processes than those captured by patents (Hipp and Grupp, 2005), non-technical forms of innovation (Millot, 2009; Lhuillery et al., 2017), in particular service innovation (Schmoch, 2003), innovation by SMEs (Flikkema et al., 2014), innovation by KIBS (Schmoch and Gauch, 2009; Götsch and Hipp, 2012), innovation in low tech sectors (Mamede et al., 2011) and also service transfer from knowledge institutes (Schmoch, 2014). Most of these studies are in line with the ideas of Stoneman (2010), but no single empirical study has focused on creative and/or cultural sectors so far.

Within strategic management, trademarks are often used as proxies for downstream capabilities of firms, as complementary to technological capabilities. Several studies have looked at cases within the software sector (Giarratana and Fosfuri, 2007; Fosfuri et al., 2008; Arora and Nandkumar, 2012; Huang et al., 2013), where trademarks can be directly linked to new software releases by firms. For the case of management consulting firms, Semadeni (2006) and Semadeni and Anderson (2010) have exploited information from trademark records to reconstruct competitive responses and imitation strategies. The differentiation function of trademarks also helps firms erect barriers to entry to shield profits from rival offerings (Lancaster, 1990; Appelt, 2009). Relatedly, trademarks are also used by incumbents within manufacturing sectors to pack product spaces and block competitors from thriving in market niches (Reitzig, 2004).

Within marketing, trademarks and brands are often used as synonyms, despite the fact that they relate to two different types of activities. Filing a trademark for registration is a rather straightforward process in itself and it is relatively inexpensive to do so. For instance, the fees for trademark applications at the UK trademark office are around 200 pounds per Nice class, depending on the type of application (<https://www.gov.uk/government/publications/trade-mark-forms-and-fees/trade-mark-forms-and-fees>, accessed 19 December 2017). Instead, building valuable brands requires dedicated resources invested over a long time period through marketing and promotion activities. The huge literature on branding (Aaker, 2004) offers several insights that can help to understand how trademarks, complemented with advertising budgets, can turn into valuable brands (Keller and Lehmann, 2006). The concept of brand equity captures the notion that companies derive several benefits from having a recognizable brand, including customer satisfaction and reputation (Keller, 1993). Krasnikov et al. (2009) find that trademark-based measures of brand awareness are significantly related to companies' market value, even after controlling for advertising budgets. Block et al. (2014b) similarly find that financial markets value new trademarks, as long as they are associated to a recognizable brand.

Finally, a more recent strand of research focuses on new ventures and the opportunities offered by trademarks. Trademarks can act as signaling devices to venture capitalists by capturing the downstream capabilities of the new ventures (Block et al., 2014a; Zhou et al., 2016), their overall quality (Guzman and Stern, 2015) or simply their entry in a new market (Giarratana and Torrisi, 2010). On the other hand, markets for brands, stimulated by vertical disintegration or the practice of licensing, can create entrepreneurial opportunities (Lechner et al., 2016).

To summarize, most of the existing research on trademarks focuses on the benefits of their use in market strategies and on their complementarity to patents to appropriate rents from innovation. In terms of empirical coverage, most studies focus on manufacturing or on selected service sectors, in particular KIBS and the software industry. No study has specifically looked at the case of CCIIs, despite the plea from Stoneman (2010) of using trademarks to capture the specific forms of output and innovation in these industries.

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