BUSHOR-1486; No. of Pages 11
ARTICLE IN PRESS
Business Horizons (2018) xxx, xxx—xxx

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Can creative firms thrive without copyright? Value generation and capture from private-collective innovation

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KEYWORDS
Private-collective innovation;
Copyright;
Creative industries;
Appropriation;
Business model innovation;
Intellectual property management

Abstract Accounts of the copyright industries in national reports suggest that strong intellectual property (IP) rights support creative firms. However, mounting evidence from sectors such as video game production and 3-D printing indicate that business models based on open IP can also be profitable. This study investigates the relationship between IP protection and value capture for creative industry firms engaged in collective/open innovation activities. A sample of 22 businesses interviewed in this study did not require exclusive ownership of creative materials but instead employed a range of strategies to compete and capture value. Benefits for some firms resemble those for participants in private-collective innovation (PCI), originally observed in open-source software development. Advantages of PCI include the ability to commercialize user improvements and a reduction in transaction costs related to seeking and obtaining permission to innovate existing ideas. Some creative firms in this study were able to generate and capture value from PCI in two directions: upstream and downstream. These dynamics offer a mechanism to understand and articulate the value of openness for creative industries policy and management of creative organizations.

1. Shaking off the dependence on IP

Widespread practices of sharing and follow-on innovation have introduced new management concerns for creative firms (Bechtold, Buccafusco, & Springman, 2016; Boudreau & Lakhani, 2015). As creative firms seek to engage audiences by making it possible to digitally reshape and share content, they risk losing control over intellectual property (IP) assets they own (Jenkins, Ford, & Green, 2013). An unanswered question in creative industries

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https://doi.org/10.1016/j.bushor.2018.04.005

management research relates to the strategic conditions under which firms should adopt open approaches to developing and marketing products. Mounting anecdotal evidence suggests that however beneficial the exclusive rights provided by intellectual property law, certain firms have found it possible to limit reliance on protections such as copyright, raising the question of how such creativity is sustained (Boyle, 2003). Examples of openness include Microsoft's fan license for video games, which permits derivative reuse of video game content by its users, and the open hardware-licensed Prusa i3 consumer 3-D printer that innovates upon the collective RepRap hardware project and is fully openly licensed, including for use by commercial competitors.

Since the protection offered by copyright is considered necessary for subsequent investment—being directly implied in the policy definition of copyright industries—the ability to sustainably generate and capture value from public domain inputs is a puzzling feature of the digital economy (Alexy & Reitzig, 2013; Raasch & Herstatt, 2011). Examples of public domain inputs include the works of Shakespeare, books published by Charles Darwin, and folk songs with origins that predate the modern copyright framework. Anyone may use and distribute expressions residing in the public domain, including competing firms.

To understand the use of open IP by creative industry firms, this article draws on existing research on private-collective innovation (henceforth PCI), which was initially proposed to explain the behavior of open-source software communities (Lerner & Tirole, 2000; von Hippel & von Krogh, 2003). The simple but profound observation from PCI research is that open sharing will take place when the private benefits of doing so outweigh the costs (Dahlander & Magnusson, 2008; Lopez-Berzosa & Gawer, 2014; Stuermer, Spaeth, & von Krogh, 2009). I analyze the activities of a sample of creative industry firms that have successfully commercialized products residing in the public domain, paying attention to the costs and benefits of using freely available IP inputs for creative businesses. I adopt an activity-system perspective on firm behavior (Troxler & Wolf, 2017; Zott & Amit, 2010), which locates value generation and capture activities both within and outside of firm boundaries. I observe interesting findings on the varying impacts of the absence of exclusive IP rights on commercialization opportunities to creative firms under different conditions. Finally, based on these findings, I offer specific management and policy considerations with an emphasis on lessons for practitioners and avenues for future research.

2. Link between copyright and creative industries

Creative industry firms generate and capture value through activities of creative human endeavor (Oakley, 2004; Schlesinger, 2009). In major national accounting exercises, such as those performed by the Department of Culture, Media, and Sport in the U.K., the creative industries are understood to encompass the activities of advertising and marketing, architecture, crafts, design, film, television, video, radio, photography, software, publishing, museums, music, and the performing arts. In both Europe and the U.S., these activities are often referred to as copyright industries (Manfredi, Nappo, Ricci, & Maggioni, 2016), emphasizing the perceived importance of copyright protection for their sustainability.

The role of IP in creative industries differs from other industries in several important ways. One important distinction is that copyright applies automatically to a work once it is made in a fixed form. Unlike patent and trademark, no initial registration is necessary; copyright resides automatically with the person who first created the work. To build further upon a copyrighted work, any follow-on user needs to obtain permission from the copyright owner. This involves the cost of any license as well as search costs involved in tracking down the appropriate owner(s), which can increase the cost of using copyrighted material (Baldia, 2013). The term of protection offered by copyright is longer than other IP rights. In Europe and the U.S., copyright protection generally lasts for 70 years from the year of the creator's death. In the case of works made for hire (e.g., within a business), copyright protection in the U.S. currently lasts for 120 years from the creation date or 95 years from first publication, whichever is shorter. At the time of copyright expiry, the work falls into the public domain.

Creative industry firms deal largely in intangible goods that may be more susceptible than physical products to information spillovers, reducing firms' ability to profit from innovation (Teece, 2010). This problem is amplified in digital media for which it can be harder to appropriate value from creative products (Hesmondhalgh, 2007; Teece, 2010). A first wave of research on the effects of digitization on the creative industries dealt primarily with the impact unauthorized copying (piracy) had on firms' ability to invest in new products (Landes & Posner, 1989; Watt, 2000). More recently, research expanded to consider the role of digital inputs to the production process, the rise of audience participation, network effects arising from interactivity, cost