



Managing Creative Enterprises

Creative industries – Booklet No. 3



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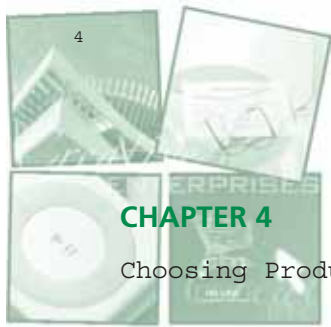


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*Creative
Enterprises*

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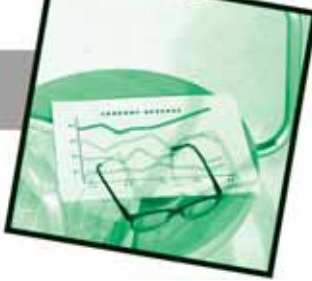
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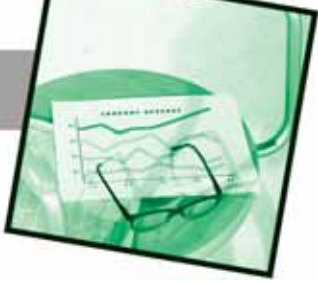
The World Intellectual Property Organization (WIPO) is pleased to present this new Creative Industries booklet focusing on the management of creative enterprises, a topic of great importance for all those involved in the creative sector.

In recent years a growing number of economic studies worldwide have demonstrated the impressive contribution of creative enterprises to economic growth, jobs and wealth creation. These enterprises which are professionally involved in the process of creation, production and distribution of creative goods and services often make use of various forms of intellectual property. They have established themselves as an integral component of the vibrant creative economy and the continuous support and development of creative enterprises now features as part of most countries' national economic development strategies.

The purpose of this WIPO publication *Managing Creative Enterprises* is to provide relevant reading material to creative business entrepreneurs in order to enhance their management skills and ability to grow their businesses. The publication is therefore intended to be used both (1) as a tool to understand the specifics of the creative market and the major challenges facing creative enterprises in terms of financing, pricing, marketing or managing of intellectual property assets, and (2) as a practical guide to assist managers and creators in addressing these challenges and setting up and running viable creative businesses. The topics presented in the publication only introduce the complex subject of management with respects to enterprises operating with creative assets. Therefore the structure has been designed as an introductory training tool for professionals in this field.

The publication was commissioned by WIPO and written by Xavier Greffe, renowned Professor of Economics of Culture and Creativity at the University Paris I – Sorbonne.

The views expressed in the booklet are those of the author and do not necessarily reflect those of the Organization.



SUMMARY

Creative enterprises are increasingly considered today as new tools for sustainable development. In the 1990s, the Creative Industries task force within the UK Department of Media, Culture and Sports defined such enterprises as those 'that have their origin in individual creativity, skill and talent, and which have a potential for wealth and job creation through the generation and exploitation of intellectual property'. They are often dedicated to the creation and exploitation of IP-protected works such as the arts, films, games or fashion design, or the provision of business-to-business creative services. The vast developmental potential of creative industries and enterprises lies in the fact that they do not draw upon factors that most poor countries lack, such as capital and natural resources. Instead, they draw upon creativity and talent, resources with which all countries are richly endowed. Moreover, the potential of these industries goes beyond the generation of income as creative industries are also a fundamental means of communication and socialisation. Lastly, the frontiers between creative industries and other types of industry tend to disappear as technological advances permit the creation of an ever-growing range of products and services and creativity becomes an increasingly prominent input in the production process of most traditional industries and services. For example, digital technologies hold out the possibility of the infinite reproduction of creative products and their manipulation and re-creation in alternative forms.

Being a product of the mind, creativity has a fundamental intangible dimension. The creative product derives its value from the artistic and human talents incorporated in it at different stages: creation, production, reproduction and distribution.

This has several consequences: Creative goods are generally collective goods, they are exposed to the risk of copying, they are generally the fruits of experience and they give rise to new economic models such as *versioning**. The distinctive nature of

* Refer to Glossary.




creative goods implies that creative enterprises face two specific challenges, namely uncertainty and turbulence:

- *Uncertainty*: “Nobody knows” could be the leitmotiv of creative enterprises when they wonder what kind of reception their unique products will receive from the public.
- *Turbulence*: Due to their creative nature, these enterprises are often characterised by the spontaneous development of ideas. Once an idea is fully exploited, the enterprise may decide to develop other ideas. Sometimes, the developed idea may be executed in-house and at other times it may be licensed to another enterprise which will then take responsibility for its execution. Even if the company decides to implement the idea itself, it should be aware that such an idea or concept may evolve over time leading to what is called “ad hoc development”.

Creative enterprises may resort to various value logics, but with different intensity.

- Creative enterprises are very close to the *value shop**. The fact that they produce new goods and “experience goods” creates very specific links between sellers and buyers. The performing and visual arts, for example, testify to the need for a very special relationship that requires a high level of trust between the seller and the buyer. Painting, acting and publishing illustrate this logic.
- Creative enterprises may also assume a *value chain** dimension. As soon as they reach a certain size or if they have to solve problems related to distribution, this principle becomes apparent.
- Creative enterprises may assume a *value network** dimension depending on the nature of the creative product concerned. This may be justified as an effect of fashion in the case of several cultural products (snob effect or bandwagon effect): it is thus possible to note that the number of consumers for their products may increase or decrease over time when compared with the total number of existing consumers.

Some of these challenges will be determining factors for the purposes of finding a suitable business model for the management of creative enterprises at a time when new technologies are emerging:

- 
- Issues related to the efficient management of intellectual property assets are of great importance today. Producers find it very difficult to commercialise intellectual property assets resulting from in-house development or to negotiate the myriad of IP rights associated with multimedia content. The uncertainty surrounding the exploitation of IP has discouraged risk and rendered some IP holders too protective of their rights. As a result, many companies are unwilling to share IP rights, or are uncertain about transferring them when they enter into collaboration agreements. Another pending issue is the ignorance of the potential economic benefits IP rights may bring to creative enterprises.
 - It is always difficult to develop effective strategies and revenue models for new products. Classical revenue and business models normally applied by the traditional industries may not be relevant and may even give rise to a number of problems in the creative sector.
 - The power wielded by some distributors makes them relatively indifferent to the products of the local industry. The sheer size of their market power may also mean that they effectively act as gatekeepers for the effective distribution of content. In consequence small producers have difficulties finding an outlet to relay their need for commercial innovation.
 - For a large number of creative enterprises, the process of defining a common standard for interoperability remains on the agenda.

Upon identification of the specificities of the cultural market and of the major challenges facing creative enterprises, the aim of this publication is to assist managers and creators in both developed and developing countries in setting up a viable business enterprise in the creative sector. Indeed, Creatives are often in need of different management and positioning strategies because their products are out of the traditional range. Hence, the overall objective is to produce a methodological tool that could serve as reference material by creators and creative enterprises.



CHAPTER 1

The Relevance of Creative Enterprises

Creative enterprises can be defined as entities that have their origin in individual creativity, skill and talent, and which have a potential for wealth and job creation through the generation and exploitation of intellectual property¹. Various criteria have been used to shape the contents of this sector (See Table 1.1.).

- The first criterion takes into consideration the importance of new information and communication technologies to bring to light new types of products and enterprises. This criterion is not always discriminating because information and communication technology influences every economic sector, but it is also true that it defines very specific perspectives and challenges for creative products.
- The second criterion concerns the importance of the intellectual component in the production of such goods. Although many creative industries use these new technologies intensively, it is essential to recognise the predominant role of individual creative talents.
- Creative industries can also be defined as industries producing and distributing goods and services centred on text, symbols, images and software. They constitute a specific cluster of knowledge-based activities that usually combine creative talent with advanced technology and whose output may be protected by a wide range of IP rights. The best known examples of these activities are the performing and audio-visual arts including music, cinema and television, software, video games, publishing and broadcasting.
- Creative industries have moved rapidly from the relative seclusion of the cultural sector to the very visible fields of the international trading system, intellectual property regulation and corporate control and responsibility. Creative goods and services are cultural assets and tradable commodities, having both a symbolic meaning and a price tag. On the one hand, policy-makers must



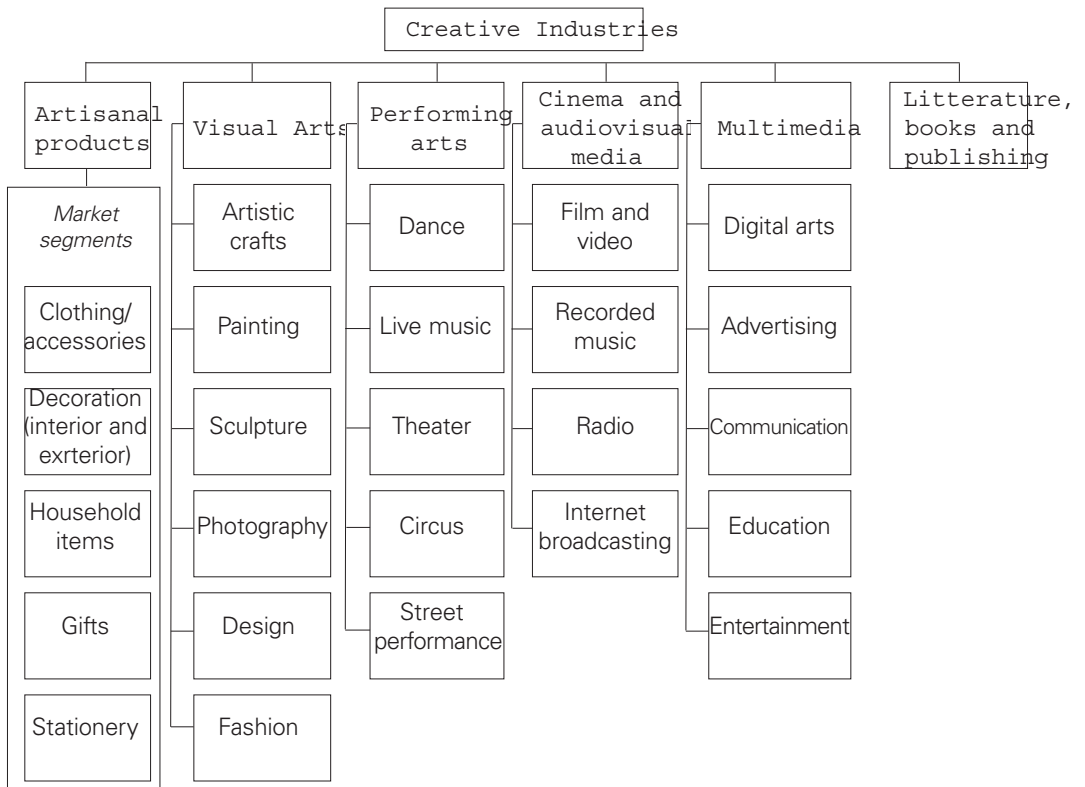
ensure that the trading of creative products does not diminish their cultural imprint and the symbolic meaning they carry. On the other hand, there is no doubt that a greater exchange of such products will encourage the creative enrichment and dynamic evolution of cultures.

Moreover, the difference between creative industries and other types of industry is increasingly disappearing as technological advances permit the creation of an ever-growing range of products and services and creativity becomes an increasingly prominent input in the production process of most traditional industries and services. Digital technologies hold out the possibility of the infinite reproduction of creative products and their manipulation and re-creation in alternative forms.

This opens three new perspectives.

- Firstly, there are new opportunities: It is possible to obtain information, download an important portion of these products and make available access to perfect digital copies that exist in both public and private collections all over the world.

Table 1.1. The creative industries



Source: WIPO: WIPO (2004), National Studies on Assessing the Economic Contribution of the Copyright-Based Industries, WIPO, Copyright Industries: Report No.1.



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- Secondly, more and more digital software is now used in the production of creative goods and creators should be ready to learn about, buy and apply such new software programs. Creators must establish a synergy between their creative talent and the opportunities offered by new technologies.
- Thirdly, users can actively participate in the definition or redefinition of creative products. This feature is present in new interactive video games where players can propose new or alternative paths. Hence, the progressive disappearance of a clear dividing line between producers and consumers makes it more difficult to define a creative product and also to identify the relevant intellectual property rights.

The huge developmental potential of creative industries and enterprises lies in the fact that they do not draw upon factors that most poor countries lack, such as capital and natural resources. Instead, they draw upon creativity and talent, resources with which all poor countries are richly endowed. However, the potential offered by these industries goes beyond the generation of income for the poor. Creative industries are also a fundamental means of communication and socialisation.

- In developed and developing societies, creative industries prosper in cities and have a singular impact on the periphery of mega-cities in the developing world, where traditional community bonds are fragile and forms of social participation rare. They provide intellectual stimulation, promote collective entrepreneurship and very often – as in the case of the music industry – give a voice to marginalized communities.
- Fostering creative industries in developing countries may also allow a wider dissemination of the expression of their culture in the developed world and put creative activities on a sustainable footing. Yet, even though globalisation may open new possibilities for creative industries, it also encourages the concentration of market power through large-scale mergers and acquisitions and tighter control over production and distribution. Very often, their economic potential remains unrealised for a number of reasons: lack of awareness (e.g. of intellectual property rights); lack of access to global media distributors; market failure as a result of 'first mover' advantages which make it difficult for late entrants to catch up.



At the world level, UN agencies are now paying greater attention to particular aspects of creative production:

- WIPO has recently undertaken the task of incorporating the development dimension in all its activities (WIPO's Development Agenda), which implies approaching the intellectual property system from a development perspective.
- WTO is dealing with the issue in the context of the GATS negotiations and the TRIPS agreement, while the ITC is developing new programs to link creative producers to the global market.
- UNESCO is finalising the negotiation of a convention on cultural diversity, which will be a major policy instrument for all activities related to creative industries.
- UNDP has long supported craft industries in the creative sectors, and its Human Development Report 2004 emphasised the wider importance of creativity for development.
- UNCTAD, in turn, has completed pioneering work in identifying new trade and growth opportunities for developing countries in trade, finance and distribution of creative industries.

1. The Importance of the Creative Sector

1.1. The Content: The Copyright Criterion

Over the past few years, several organizations and authors have proposed a new division of the economy, for better definition of its various sectors.

When describing the content of new sectors, these are often presented as extensions or updated versions of existing activities, especially in the case of cultural activities. Hence UNCTAD's International Trade Centre has drawn attention to three elements:

- The nature of raw material or the mental skills and imagination required for the production of cultural goods;
- The fact that the economic value of a cultural good is based on inspiration and reputation;



- The importance of intellectual property rights for realising such economic value.

UNCTAD has thus identified six creative industrial sectors: arts and crafts, visual arts, performing arts, cinema and audiovisual media, multimedia, books and publishing. This classification expands the old classification of cultural sectors by including new sectors (e.g. multimedia) as well as traditional sectors such as crafts.

The main problem arises from the fact that the association between crafts and visual arts is unclear. When you refer to a product as a craft product, it is not considered as a unique product but as a product that can be reproduced on a large scale with negligible modification.² In this sense, craft products are not usually considered as purely creative goods entitled to the benefits of copyright, unless their artistic qualities allow them to be considered as works of art and if national copyright law allows it.

It is therefore logical that the common perception of creative industries should be broadened to include a simple and significant criterion, namely the strategic importance of intellectual capital in such industries and the specific methods of recognising and remunerating it. For example, activities or industries where copyright protection plays an identifiable role may be referred to as 'copyright-based industries'. According to WIPO the creative sector gives rise to authors' rights through the production of new protectable goods and services.

It is advisable to clarify the concept of intellectual property at this stage.

Intellectual property (IP) refers to the legal rights which result from an intellectual activity in the industrial, scientific, literary and artistic fields. Countries have laws to protect IP for two main reasons: to reward creators and to promote creativity and its dissemination for economic and social development.

Intellectual property may be divided into two branches:

- Industrial property which covers inventions, industrial designs, trade marks, service marks, layouts of integrated circuits, commercial names and geographical designations (geographical indications or appellations of origin).



- Copyright which covers literary and artistic works and protects the authors against those who 'copy'. Hence, the author has specific rights that he alone can exercise such as the right to reproduce a work, the right to prevent a distorted reproduction, the right to disseminate copies and permit public performances, broadcasting, translation, etc. In some cases the right to make copies may be executed by another person, for example the producer who has obtained a licence from the author.

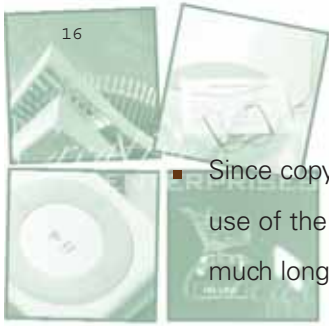
In sum, copyright law gives an author or creator of a work a diverse bundle of exclusive rights over his/her work for a limited period of time. These rights enable the author to control the economic use of the work in a number of ways and to receive payment (prevent copying). Copyright law also provides 'moral rights' which protect an author's reputation and integrity.

There is a marked difference between copyright and patents. Copyright protect the form of expression of an idea whereas patents protect the idea/invention itself.

- The creativity protected by copyright is the creativity inherent in the choice and arrangement of various works. Copyright laws protect the owner of a copyright against those who copy and use the form in which the original work was expressed by the author.
- From the industrial point of view, an invention may be defined as a new solution to a specific problem in the technological field. An invention may relate to a product or process and in order to be eligible for patent protection (exclusive property right over the invention for a maximum period of 20 years) it must meet several criteria; in particular it must be new and industrially applicable.

The difference in the nature of copyright and patents explains why the duration of the protection is different in the two cases:

- Since patents protect useful inventions, their length is relatively short (around twenty years) so that the dissemination of the protected subject matter is not prevented for an excessively long period of time, thus enabling others to gain the benefit of the invention;



- Since copyright does not prevent the use of the idea but only the unauthorised use of the expression of that same idea, the length of copyright protection is much longer (around 75 years after the author's death).

Industries that produce copyright-protected works constitute the core of the creative sector. However it is also necessary to mention that those industries that distribute and manage copyright also fall into the category of creative industries.

There is a creativity dynamic that makes it important to assess at the outset the possibility of producing new goods and services with the idea of gaining recognition for them and promoting their use among potential consumers, enterprises and households.

Thus, there are three sub-sectors:

- Activities that directly produce copyright-protected material such as press and literature, cinema and video, radio and television, photography, software and data bases, visual and graphic arts, advertising services and collective management organizations.
- Upstream of this sub-sector -there are other activities that provide the inputs to the above-mentioned activities: computers, photocopiers, television sets, photographic equipment and various types of support material such as celluloid, tapes, cassettes, etc. All these industries are copyright dependent.
- Downstream of the first sub- sector, there are activities producing decorative objects, designer and ready-to-wear garments, interactive video-games, designs and all other forms of use and expression of heritage. These industries rely only partially on copyright protection.

Finally, other criteria can also be considered.

- One criterion makes a distinction between the production of protectable subject-matter, its financing and distribution as well as its collective management.
- Another criterion depends on the type of management. In such a case, it is necessary to distinguish between profit-based private companies and non-profit private enterprises (including cooperative societies and associations) and public bodies.



1.2. Size

According to World Bank estimates, creative industries already contribute as much as 7 per cent of the world GDP showing a particularly fast rate of expansion over the past decade. The forecast is for growth rates averaging 10 per cent per annum in the coming years. These industries are among the most dynamic in the trading system and are already among the leading sectors in more advanced economies.³

If we take into account the place in the economy occupied by the copyright-based industries, and the core copyright industries, in 2001-2002 (statistics may take either of them as the base depending on the country concerned), we note that it is very significant⁴ (Table 1.2). The share of the creative sector in terms of jobs may be higher than its share of GDP: this is an indication that it covers above-average labour-intensive activities.

Table 1.2. The Relative Size of the Creative Sector

	% of GDP	% of Employment
Canada	5.4%	5.3%
Hungary	3.9%	4% (core)
Latvia	2.9%	3.7% (core)
Singapore	5.7	5.8 (core)
US	6% (core)	4%

Sources: National Studies on Assessing the Economic Contribution of the Copyright-Based Industries, WIPO, Copyright Industries: Report No.1. [Canada, p.117 & p.122; Hungary: p.313; Latvia: pp.267-268; US: pp.213 and f.; Singapore: pp.25-27].

Creative products increasingly form part of international exchanges: the share of cultural goods represents approximately 4 per cent of global trade. Since they are very labour-intensive, their job potential is frequently stressed. In developed countries the percentage of cultural growth varies from 3-7 per cent depending on the definition adopted for culture.⁵

In dynamic terms, the creative industries are generally growing and becoming stronger in terms of jobs, GDP and even exports. In Singapore, the average rate of annual growth was 5.7 per cent during the period 1986-2001 and in the US; it was 3.41 per cent during the period 1997-2001. In the UK, the annual growth rate of creative industries was 6 per cent and their share of GDP was approximately 8 per cent.⁶



Their importance can be even more significant when the share of the creative sector in some cities is considered:

- In Vienna, the creative sector is estimated to involve almost 14 per cent of the active population which makes it the most important sector in terms of jobs.⁷
- In London, the number of jobs in the creative sector amounts to almost 500,000 which makes it the top sector, even more important than the traditional financial sector.⁸
- A recent study estimated that in the Ile de France region or in Greater Paris almost 150,000 people were employed in the audiovisual and book-publishing industries, which represent only a small fraction of the creative industries in the region.⁹

Such a hypothesis is confirmed if we consider selected sub-sectors of creative industries such as the cultural industries sector.

- Cultural industries are one of the fastest growing sectors in the OECD economies employing on average 3-4 per cent of the workforce.¹⁰
- Worldwide, cultural industries are considered the fifth largest economic sector in terms of turnover after financial services, information technology, pharmaceuticals and biotechnology, and tourism.¹¹
- In many European countries, the percentage of “cultural” jobs now exceeds 2.5 per cent, and according to the broader definition of culture, it may reach 5-7 per cent.¹²
- In 2000, these industries accounted for 3.2 per cent of Brazil’s GDP.¹³
- On the African continent, South Africa’s cultural industries represented 3 per cent of its GDP in 1998.
- In Cameroon, the cultural sector accounts for only 2 per cent in terms of formal activity, but if we consider the informal economy, this percentage may be twice as high. Asia, on the other hand boasts the world’s most vibrant film industry: Bollywood, India’s Mumbai-based film industry produces 900-1000 films annually compared with France and Hollywood whose combined annual output is around 250-300.



These cultural contributions have been slow in making themselves felt. For a long time decision-makers and economists paid little attention to them, but this is gradually changing. Culture is more and more appreciated for the jobs it creates and tourism for the financial returns it engenders.

2. The Creative Product: from Intangibility to New Economic Models

As we have seen, the level of dependence on copyright protection may be used to identify the creative industries, however it is also necessary to define the characteristics of products that are created in order to understand the problems creative enterprises have to face and solve. Since these products are very diverse they will not necessarily have the same characteristics.

Being a product of the intellect, the creative product has a fundamental intangible dimension. It owes its worth to the artistic and human talents incorporated in it at different stages: design, execution and, in some cases, even during its reproduction. This has several consequences.

- *Creative goods are generally collective goods.* The intellectual dimension of creative goods can be potentially used and enjoyed by an unlimited number of people without depriving the owner of their use or enjoyment.¹⁴ We can say that in a sense the intangible component of the creative product makes it look like a collective good which means that it needs legal protection if one wishes to create a positive incentive for its production. This age-old problem has become more complex today because of the facility with which these products can be copied without having to resort to the slow, complex and costly process of recruiting creative talents for such purposes.
- In the absence of such protection both the producer and the artist would be deprived of the expected fruits of their efforts and would not have any incentive to produce such creative products.
- *Creative goods are exposed to the risk of copying.* Their intangible content can be mobilized by enterprises that would only need to integrate it on a physical support. Since creating a new product is very costly, entailing negative



costs as it is not known if the product will find a market, it is much less costly to copy an existing product. The costs of conception and creation – the intangible dimension – of the creative product having already been incurred, all that remains is the cost of technical reproduction.¹⁵ Hence, one of the great challenges of creative production is managing the risk of copying and even forgery.¹⁶ To protect themselves against such risks, companies enjoy legal protection but it is also possible to devise some economic strategies to reinforce this protection, e.g. constant renewal of the product to be one step ahead of the copier, linking the purchase of the creative product to the purchase of “another good” that cannot be copied, e.g. an accessory without which the core product cannot be used (bundling).¹⁷

- *Creative goods are generally experience goods:* An experience good is a good whose utility becomes apparent only after it is used. A consumer cannot therefore recognise its quality if he has not already used the good or if he cannot find the relevant information about it. As the creative asset is new in essence, the only solution for the consumer will be to try and obtain this relevant information indirectly. This implies attaching a great deal of importance to subjective factors when taking the decision to consume a cultural good. The ability to find the data and process it, the memory of past experiences, the importance of the consumer’s built-in cultural capital are elements which will ensure that consumers benefit from such information and that they will be willing to pay for the good in question.
- *Creative goods give rise to new economic models such as “versioning.”* Producers can exploit this difference in the ability to pay by offering the same content at different prices, which is known as “versioning.” By first targeting consumers who are willing to pay the highest price, producers can attain three objectives: obtain large consumer surpluses; mobilize undecided consumers through advertising campaigns depicting satisfied users of the products, thereby triggering the third objective, social effects of imitation. The best known form of versioning is seen in audio-visual production where the same “program” can be shown in different formats: as a film in movie theatres and on a DVD as well as being broadcast on cable networks and commercial television networks. The practice of versioning is quite old in the book publishing industry where there are hardback and paperback editions of the same book.



- *Creative goods permit economies of scale:* Such content goods can bring profits to their producers through economies of scale. Once the intangible contribution has been mobilized, the unit price of the product or service will decrease as the number of products or services sold increases. This would put the producers in a position known as a monopoly. These economies of scale may give rise to economies of scope. The availability of different technical supports enables a producer to offer an intangible program on various types of supports. Thus, the publisher of a book will be able to offer it in a written version, an electronic version, an oral version, etc. as this would allow him to amortize his “negative costs” while being able to address several markets at the same time.

3. Challenges for Creative Enterprises

The particular nature of creative goods generates a number of challenges for creative enterprises.

3.1. The Uncertainty Dimension

“Nobody knows” could be the leitmotiv of creative entrepreneurs when they wonder what kind of reception their products, which have been produced for the first time, will receive from the public.

This uncertainty is inherent in creative enterprises and a somewhat similar phenomenon is seen in the case of prototypes. When a company plans to put a new product on the market, it first tests the prototype before deciding to launch it on a large scale. The production of the prototype is costly, but the cost will be amortized later when the product is mass-produced . However in the creative field, the prototype may be the “final” product so that any error at this stage would deprive the producer of expected profits and prevent him from recovering the costs already incurred. This is particularly true for creative products such as cultural goods*.

Producers will therefore have to reduce the product’s risk as well as their own. This can be done in several ways:

* Refer to Glossary.



- Find the best possible way to ensure that a product is suitable for its potential audience or market. In the field of cinema, this strategy implies the choice of the right actors and the right subject or the adoption of a suitable marketing strategy.
- Look for productivity gains. If the creative core of a product does not offer this opportunity, other dimensions such as information, distribution and reception can provide productivity gains.
- Share risks with creative talents. This strategy has two facets.
 - Bringing down their remuneration which means exploiting their dependence on the activity.
 - Giving the expected remuneration to creative talents in the expectation that the project will be successful. The main problem in this type of risk-sharing is to assess the profit correctly. Smart producers tend to inflate it or deny that there is any profit to suit their interests, which has given rise to the expression "*creative accountancy*". Moreover, the use of these strategies may be restricted by the observance of intellectual property rights.
- Tap into consumer surplus and remove the clauses requiring payment according to the differentiation of products and prices (versioning). Although some section of the prospective buyers may withdraw at a particular price, others will undoubtedly be prepared to pay more. The price represents only a part of their maximum budget and these buyers are normally willing to acquire these artistic goods or services as long as their marginal utility is higher than the price. An alternative method is to differentiate the products offered according to objective conditions: possibility of changing reservation dates; seats offering better visibility, introduction of auxiliary products or services, etc. In this way, it is possible to introduce a range of differently-priced products stemming from the same basic service.
- Modify the way production is organised. When a company needs to produce new goods or services to boost its own activity, it has the choice of producing them in-house or obtaining them on the open market. This is the famous dilemma "hierarchy or market" updated by Coase, the aim of which is to minimise the transaction costs: If it is less expensive to buy in a service than to produce it in-house. But even when the company chooses to buy in the goods or services, there are several ways of doing so: simple purchase, partnership, long term agreement, purchase of shares, etc. Each of these formulas has its



own transaction costs and the company will have to look for methods of co-operation to minimize them.

3.2. The Turbulence Dimension

Due to their creative nature, these enterprises are often characterised by the spontaneous development of ideas. Once an idea is fully developed, the enterprise will focus on developing other ideas, leading to what is called “ad hoc development”. Sometimes, the developed idea may be executed in-house and at other times it may be licensed to another enterprise which will be responsible for its execution.

This has several consequences:

- The creative enterprise will be obliged to change its production function frequently, which is likely to create turbulence, thus requiring very flexible forms of employment and remuneration.
- The creative enterprise may engage in creative production on a small scale which would restrict its financial investment.
- The creative enterprise may be unstable and therefore be forced to consider the possibility of adopting new ideas.^{18 19}
- The strategic importance of the creative talent changes the bond between the ‘employee’ and the creative enterprise. The person having a creative talent becomes the entrepreneur of his/her own talent in a certain way. Such talent being a specific and irreplaceable resource, the creator may find it advantageous to keep it under his/her own control since it is the very basis of an activity which would disappear in its absence. Thus the person has a hold over the company and can jointly decide the conditions for the development of his/her talents. In some situations, the artist will directly undertake the execution of the project of which he/she is the mainstay. In other situations, the artist will have to participate within the framework of a large productive organization. Frequently, he/she is unable to act on his/her own for various reasons such as the collective nature of the products in question, the need for important financial resources or the need to work with a reputable organization.

3.3. More Empirical Challenges

- Creative enterprises often suffer from an imbalance between the functions of production and marketing. Thus the total energy of the enterprises is devoted to the tasks of designing and producing goods, and only an inadequate portion of its resources is set aside for market research and consumer mobilization.
- Creative enterprises often lack information about the market and the kind of support structures available. This lack of information is frequently amplified by the isolationism practised by the few existing professional organizations.
- Lack of specialised professional competence is a characteristic of most creative enterprises. A study of commercial and non-commercial barriers impeding the export of creative products from four West African countries concluded that one important barrier was the significant lack of such specific competence in the performing arts and music sectors.²⁰ Thus many creators simply feel overwhelmed by the wide array of management skills needed to run a business and potential entrepreneurs hesitate to start their own business even after receiving special training.
- In countries where training resources are scarce the lack of professional skills is evident. This forces many creative actors to engage in areas in which they do not necessarily have a comparative advantage, thus compromising efficiency and alienating them from their core artistic activities. In more general terms, the failure of many craft enterprises may be attributed to lack of management skills rather than deficiencies in design.²¹
- The lack of funding is another problem in developing countries that is not limited to the cultural sector. This is of great importance for cultural industries where initial funding needs are quite significant. In the case of crafts requiring a lower capital investment, this handicap will not have the same impact.
- In some creative sub-sectors, such as the cultural sectors, there is a widespread belief that creators do not look at their enterprise as a “business” but more as a one-time project. In such a case, its growth potential is likely to be very limited.²² Another source of difficulty is the fact that artistic activity is generally considered to be subsidiary to a principal activity. In many places, artists are first and foremost teachers, journalists, shopkeepers or farmers. In consequence, because of their amateur status they are often not taken seriously and in some cases even their talent is devalued.²³



4. Recommendations

The specific characteristics of cultural enterprises are likely to pose a certain number of challenges:

- *Reducing the uncertainty resulting from the systematic novelty of creative products.*
- *Arbitrating between two different chains of reasoning used by the company with the help of a suitable organism: endogenous reasoning based on artistic creation and exogenous reasoning based on the state of the market.*
- *Optimizing expenditure on production, which is supposed to maximize the quality of cultural goods, and distribution which makes it possible to mobilize consumers to use them.*
- *Professional management for adapting the production structure to implement new objectives within the shortest possible time.*
- *Selecting the type of labour contract most suitable to the nature of the activity jointly with the artist in order to prevent any dispute.*
- *Mobilizing audiences and markets.*



CHAPTER 2

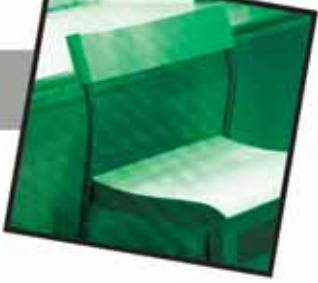
Creative Enterprises: Choosing a Development Strategy

Like any other enterprise, creative enterprises must generate economic value to be able to cover their production costs, future investment and remunerate their shareholders. The interdependence between potential needs and actual supply can also be emphasized at this stage.

Sometimes social value is not totally commensurate with economic value; thus free or subsidized admission to museums may at times exceed the market value. However in a market economy, the sustainability of an enterprise depends basically on its capacity to produce economic value. In the absence of this value the enterprise is bound to fail; unless it manages to survive through makeshift solutions, thereby compromising its autonomy and innovative skills.

To produce economic value, enterprises have to organize their resources, suppliers, distributors and consumers in a coherent manner. This value system depends on the nature of the market and needs to be arranged so as to provide an answer to the following questions:

- Is it better to produce some necessary elements in-house or it is advisable to subcontract their production through licensing, for example?
- Is it better for the enterprise to distribute its own products or to use intermediaries?
- Is it advisable to use the same type of labour contract irrespective of the nature of human resources or is it better to differentiate between them depending on their specific talents and fields of competence?



This value logic may differ depending on the following parameters:

- The size of the enterprise: a large manufacturing enterprise can create value by controlling the entire production chain. On the other hand, a self-employed artist or craftsman may create value by adapting his services to a particular consumer without trying to control the entire production process.
- The economic sector: the strategies adopted by various enterprises are likely to depend on whether or not their products can be easily copied.

In sum, the cohesion between the nature of the market and the organization of the enterprise helps to define the economic logic of valorization. Once the valorization logic is defined, it is then possible to consider alternative strategies of institutionalization and development.

1. The Three Types of Logic Underlying the Creation of Economic Value

1.1. The First Value Logic: The Value Chain*

The Foundation

The overall process of most economic activities is generally sequential and linear.

- Indeed, the overall process has a clear beginning and end and can be organised in sequential phases.
- Value creation relies mainly on standardized processes, mass production, and repetition.
- Value logic is a value chain, since the value of the overall process depends on the specific advantages gained at each stage of the process. These specific advantages concern economies of scale and the reduction of transaction costs.

Manufacturing plants, and more particularly automobile companies, tend to fall primarily within this category.²⁴

* Refer to Glossary.

The Characteristics of the Value Chain

Some of the following characteristics are usually present:

- Its technology is usually based on long-established technology.
- Its resources are mainly monetary and physical.
- It transforms more or less generic inputs into more or less generic products.
- Its relative cost-to-customer value is defined either by cost reductions that the product can provide in the customer's activities or the performance improvements the customer can gain by using the product.
- It is inherently driven towards efficiency. All sub-units in these organizations must contribute to optimize overall efficiency.

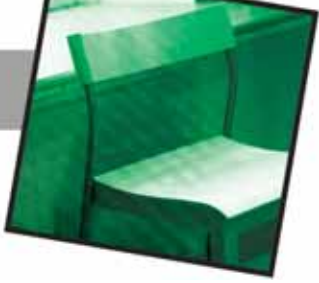
In value chains where monetary and physical resources are a determining factor, certain management principles are clearly apparent from the outset:

- Secrecy is paramount since a small advantage would be quickly detected by competitors;
- Size matters and all enterprises strive for a monopoly* since they have to survive in a world dominated by economies of scale;
- Standardization obliges enterprises to adopt a forceful attitude toward customers since it is a world dominated by economies arising from experience and learning, requiring repetition and thereby standardization.

The Corresponding Economic Strategy

- The strategic value delivered to customers is a mix of distinct value dimensions among which reduced cost and high functionality are determining factors.
- The profitability of an industry will depend on the interaction between various forces: buyers, sellers, substitutes, entrants and existing competition. Any increase in the economic value will depend on the ability to adapt the industry's structure, e.g. by creating new goals such as new technical standards.
- When demand exceeds supply and supply cannot be rapidly expanded, the industry could in fact benefit from monopoly rents, but this would attract new competition and act as an incentive to define new functionality or new costs.

* Refer to Glossary.



1.2. The Second Value Logic: The Value Shop*

The Foundation

In a value shop, the main focus is on solving a previously unknown or unsolved problem for the client. In contrast to the value chain, the value resides not only in the solution itself – viz. output – but also in the individuals who come up with the solution and the way they reach it.

- The overall process does not necessarily have a clear beginning and end. This type of value creation relies both on the ability to make a client recognize the usefulness and/or the ability to continuously reconfigure a given resource portfolio to address completely new problems and situations that could arise due to the variety of users. A classical research facility is an example of this logic. Its efficiency depends as much on economies of scope as on economies of scale (for example the annual program of an opera company or the catalogue of a book publishing house).
- Since novelty and innovation are the underlying principles, the effectiveness of this value logic depends mainly on the specific characteristics of the human resources. Thus the management of these specific talents will be a determining factor for the creation of value. Conversely, the ownership of this value may be shared with the creative talents who would thus benefit from intellectual property rights of their own.
- This logic is inherently driven towards effectiveness. If the organization fails, it is because it is not able to face potential needs (lack or loss of clients). In such a case, the company's reputation (signal value), quality of relationships and/or image and absence of symmetry with the client are important. However there could also be efficiency problems and in such a situation, reducing coordination costs and sharing the costs of uncertainty would be very important.

Engineering companies and research laboratories tend to fall primarily within this category.

* Refer to Glossary.

The Characteristics

Generally certain characteristics are more dominant:

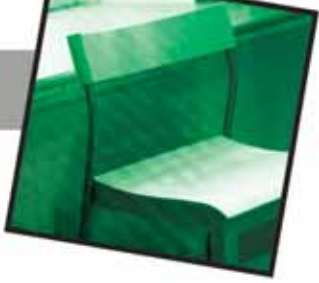
- The value shop performs the tasks of selecting, combining and organising the application of resources and activities on a case-by-case basis;
- The flow of activities is not linear but iterative and cyclical.
- Intensive problem-solving technology is required.
- Solving customers' problems including mobilizing resources and engaging in a wide range of activities for either of a single customer or a group of customers.
- Its relative value sometimes depends on more or less standardized solutions, but the value creation process is designed to deal with single cases.

In the case of value shops, other management principles are clearly evident from the outset:

- Openness, dialogue and debate are paramount both for the labour force and the customer;
- Bigger is not necessarily better and the market share is not necessarily important, as both are considered irrelevant in a world dominated by economies of scope.
- Standardization may be counter-productive in a world dominated by economies of scope.

The Corresponding Economic Strategy

- The strategic value delivered to customers is a mix of four distinct value dimensions: reduced costs; high functionality, distinctiveness (brand, reputation and image) and mental proximity (defined as all the things that contribute to lowering the barriers to building person-to-person trust).
- The difference in profitability between value shop enterprises is influenced by the differences in their resource portfolios, resources being defined as inputs in the company's operations rather than products and services. These resources deal with venues, plants, talents, competence, etc.
- When demand exceeds supply and supply cannot be rapidly expanded due to the difficulty of increasing this specific asset, the enterprise will benefit from



scarcity rents. But it is important for these assets to be relevant and applicable to a wide range of products and services.

1.3. The Third Value Logic: The Value Network*

The Foundation

Connecting people or organizations is the logic involved here, and facilitating this connection is the basis of value creation.

- Neither the starting nor the end points can be clearly identified and activities performed in a network organization are parallel and non-linear.
- The criteria of sustainability deals with both efficiency and effectiveness. Here the number of consumers is very important since the higher their number, the greater the utility of the network.
- The most relevant resources that form the basis of competitive advantage in organizations of this kind must display network economic behaviour: as a consequence, mainly relational and organizational resources can form the basis of competitive advantage.

Transportation and telephone companies tend to fall primarily within this category.

The Characteristics

Certain characteristics are usually more dominant:

The technology required is mainly concerned with mediating and facilitating.

- It links customers by enabling direct and indirect exchanges between customers separated by time and/or space.
- The value of the service is dependent upon who else uses it.
- It allows a simultaneous and layered performance of activities based on standards that are strategic.

The Corresponding Economic Strategy

Since the strategic value delivered to consumers depends on their number, the enterprise must offer them attractive incentives to join the existing network as soon as possible and to discourage them from leaving it.

* Refer to Glossary.



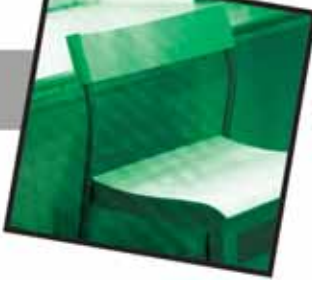
- A mix of distinct value dimensions such as reduced costs, high functionality, distinctiveness (brand, reputation and image) and trust (defined as all the things that contribute to lowering the barriers to building person-to-person trust) is present in value network logic as in value shop logic.
- The difference in profitability between value network enterprises is influenced by differences in their consumer portfolios. The resources deal with trust, incentives to join and to remain in the network, etc.
- When supply exceeds demand and demand cannot be rapidly expanded, the enterprise must create added value in its products in order to attract lost consumers.

1. 4. The Creative Enterprise as a Combination of Value Logic

Although these three types of value logic are compellingly different, they are not exclusive. For example in certain large organizations, some departments or units may depend more on the logic of the value chain than on the logic of the value shop and vice versa. Moreover enterprises initially driven by value chain logic may develop more value shop logic or network value logic over time. The best example is large enterprises that prefer to sell their patents instead of directly exploiting them.

Creative enterprises may resort to all three value logics, but to varying degrees.

- Creative enterprises are very close to the value shop. The fact that they produce new goods and experience goods creates very specific links between sellers and buyers. If we had to choose between the three logics of value, one could say that creative enterprises have a value logic which primarily matches that of the value shop. The performing and visual arts, for example, testify to the need for a very special relationship that inspires trust between the seller and the buyer. Painting, acting and publishing illustrate this.
- Creative enterprises may also incorporate a value chain dimension. As soon as they reach a certain size or if they have to solve problems related to distribution, this principle becomes apparent. The cinema industry illustrates this point very clearly. When we say that the cinema is both an art and an industry, we stress the importance of production, distribution and exhibition

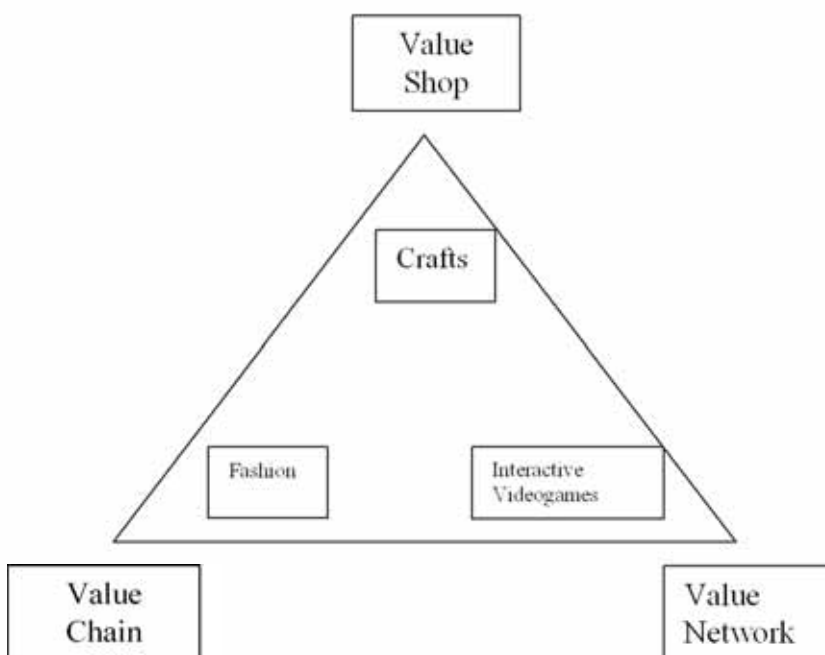


as well as the fact that these three stages have to operate coherently. It may also be stressed that it is related to the logic of the value chain (as an industry) as well as to the logic of the value shop (as an art).

- Creative enterprises may assume a value network dimension according to the nature of the creative product concerned. This may be justified as an effect of fashion in the case of certain cultural products (snob effect or bandwagon effect). This means that the number of new consumers increases or decreases as compared with the number of existing consumers. This logic of value network assumed a greater importance with the development of the Internet, which has given a technological foundation to the concept of network (and not just a psychological one). Interactive video games are a good illustration of this logic.

Further, creative enterprises may have all three value logics in different proportions. They all have value shop logic and the two other forms of logic can be added in different proportions. We thus have a fractal space (Figure 1). Typically, a position divorced from the extreme or "pure breed points" will be seen to require some kind of balancing act. The key insight offered by the fractal triangle shows how it will be useful to balance chain and/or shop and/or network value logic in order to create business opportunities and maximize the economic enterprise value.

Figure 2.1. The Value Logic Fractal Triangle



2. From Alternative Value Logic to Alternative Economic Development Strategies

As a value shop-dominated enterprise, the cultural enterprise is better suited to a development strategy that depends on the good management of its own strategic resources rather than on the modification of the boundaries of its market. It will thus reach new forms of competitive advantage by appropriately adapting, integrating, and re-configuring organizational skills, resources and competence to match the requirements of a changing environment.

2.1. The Value Drivers of Creative Companies

It is essential to understand what drives economic value in order to grasp how intangible resources increase the economic value and what the specific management strategies are.

Four categories of value drivers are traditionally identified.

- **Price:** Most organizations understand and know how to control cost drivers but understanding and controlling value drivers is much more difficult. Although the information regarding costs is usually readily available in an enterprise, it is not normally the case with information regarding the price. This is true of many creative enterprises.
- **Functionality:** It is usually defined as everything concerned with the delivery of the product or service (e.g. on-time accessibility).
- **Distinctiveness:** It is defined as everything that generates a "mind share" as a precursor to market share (brands, reputation, references, etc.). This is very important for any type of creative content or cultural products that appear a priori as unknown products or at best as products of uncertain quality.
- **Mental proximity:** They are attributes that provide a basis for lowering barriers to the building of person-to-person trust (such as shared values and beliefs). This is also very important in the case of creative goods that are often linked with an experience dimension.



In view of the specific traits of creative enterprises, it is necessary to add two specific drivers related to buyers' attitudes.

- The quality of the information available to the buyer: when faced with new products or services, the customer may not have the information relevant to their nature. There is a lack of symmetry between the buyer's perceived knowledge and the seller's knowledge. This creates a gulf that may prevent the expected purchase and destroy the expected economic value of the creative enterprise.
- The critical importance of the purchase for the buyer: in some situations, the purchase is important either because it is focused on a new good or because it represents a new type of expenditure that the customer must integrate in a pre-determined budget. There are however other situations where the purchase is 'important' and the knowledge is evenly shared in the market. Whatever the situation, the purchase will not be automatic and the consumer will seek a variety of criteria and information before buying any given good or service.

2.2. Alternative Development Strategies of Creative Enterprises

Focusing on the last two specific drivers, we may identify four areas (Figure 2.2).

Each area illustrates:

- Four corresponding combinations of drivers in order to create economic value.
- Four fundamentally-different customer behaviour zones.
- Four development strategies for creative or non-creative enterprises

*Area 1 is the "commodity" zone**

Two characteristics have been verified:

- The customer knows at least as much as the seller and does not need any specification or specific information.
- The purchase is not very important for him.

The customer will then evaluate the products on offer primarily on the basis of cost and will purchase them at the lowest price. In the case of suppliers, there is one

* Refer to Glossary.



feasible strategy, viz. cost leadership. The relevant strategy implies a very good understanding of what drives value in the minds of customers and the superiority of the ability to operate from a low cost base. A priori, creative enterprises rarely deal with situations located in this area, unless they are handling ancillary products (for example, a museum managing a restaurant).

*Area 2 is the "branded products" zone**

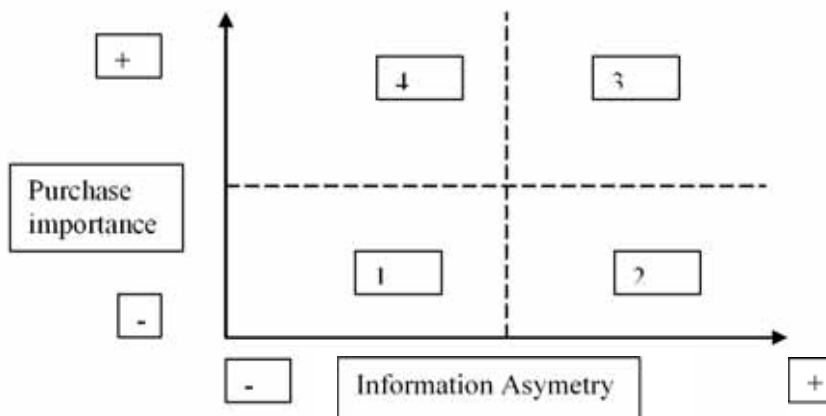
Two characteristics have been verified:

- The customer lacks information and thinks the supplier has more knowledge.
- The purchase is not important for him.

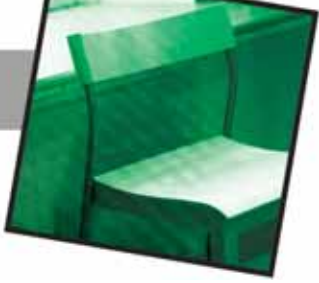
The customer then looks for additional information or for any variable that will reduce the cost of his search. Brands, reputation, image and all other attributes of distinctiveness play a major role. The main attraction in this case is the brand rather than the product itself. For suppliers operating in this zone, the most feasible strategy is that of outpacing although differentiation is also possible, it normally leads to lower profitability.

The relevant strategy concentrates on branded goods and brand advertising, design, service and quality. Alternatively, it may concentrate on innovation, functionality and first mover advantage. A creative enterprise may face this situation. As regards the fashion industry, this situation explains to a large extent what development strategy it should adopt.

Figure 2.2. Alternative Development Strategy of an Enterprise²⁵



* Refer to Glossary.



*Area 3 is the "trust" zone**

Two characteristics have been verified.

- The customer knows much less than the supplier and is very uncertain about the quality of future consumption.
- The purchase is critical.

Variables such as distinctiveness (reputation, image, brand, etc.) are required.

Potential suppliers have to present their products properly to the buyer (this is sometimes known as a beauty parade). Moreover, trust is essential. The monetary component of price is not very relevant unless the consumer is very experienced.

For suppliers operating in this zone, trust and differentiation are essential strategies. Outpacing can be used as an alternative strategy. The most appropriate strategy is a mix of distinctiveness and trust. For creative enterprises related to the performing and visual arts, these strategies are highly relevant.

*Area 4 is the "industrial procurement" zone**

Two characteristics have been verified:

- The customer knows at least as much as the seller.
- The purchase is critical.

The customer will evaluate the offer primarily on the basis of functionality and will purchase the cheapest. For suppliers operating in this area, there is one primary strategy, *viz.* cost leadership although both differentiation and outpacing are also feasible if it is possible to influence either the perceived competence of the buyer or the content of the tender document or both.

The relevant strategy implies investment in volume production, standardization or product design that simplifies production and tight cost control. Creative enterprises related to this area are design and cultural industries (video games).

* Refer to Glossary.

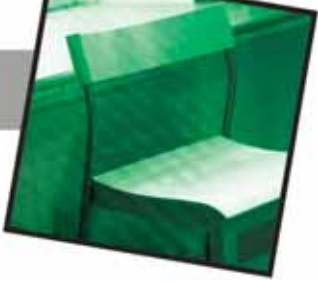
2.3. Where are Creative Enterprises Located?

Creative enterprises face situations and markets that mainly fit into areas 2, 3 and 4. Since their products are “new”, the issues of both relative importance and information asymmetry are verified. The differences between creative enterprises and their corresponding situation will depend on the nature of the products.

- If the product has a strong intangible dimension as most cultural products do, situation 3 is very likely.
- If the product has a strong tangible dimension, situation 4 is very likely.
- In that case, situation 2 will correspond to creative enterprises where creativity depends mainly on the product’s social dimension.

In simpler terms, we may say that new industrialised products fit into area 4, traditional cultural products into area 3 and semiotic products into area 2. In fact, the boundaries between these three areas are quite blurred and very often a product may fit into both areas 3 and 4 (a disk or a video game) or into areas 2 and 3 (the fashion industry). It is even possible that activities like designing may fit into the three corresponding areas.

The simultaneous development of functionality, trust and brand recognition appears to be a very important promotional tool since it fosters customer confidence and loyalty. Intellectual property may also be involved as there is an accumulated intangible capital. Price, which is the most traditional driver, cannot be eliminated but it must be considered as one of several drivers. This will have a bearing on the traditional management decisions of creative enterprises.



3. Recommendations

- *A creative enterprise must clearly identify the various types of logic underlying its activity, viz. value shop logic, value chain logic and value network logic.*
- *Irrespective of the combination, the value shop logic acts as the core logic that offers a choice between four drivers for value: reducing costs; attaining high functionality; possessing distinctiveness (brand, reputation and image); assuming mental proximity (defined as all the things that contribute to lowering the barriers to building person-to-person trust).*
- *A creative enterprise must take into consideration two additional specific drivers: the customer's or user's lack of information about the new product and its more or less strategic importance.*
- *Depending on the proportion of tangible and intangible characteristics of the new product, the creative enterprise can formulate a suitable strategy:*
 - *If the intangible dimension is predominant, trust and differentiation are essential strategies. Outpacing can be used as an alternative.*
 - *If the tangible dimension has a more active role in the definition of the product, brand advertising, design, service and quality will be equally relevant.*



CHAPTER 3

Institutional Forms of Creative Enterprises

The value logic of creative enterprises plays an important role in their institutional design. By institutional design we mean the choice of a legal form and the modification of this particular form over a period of time in order to answer the following questions:

- Is it better to develop the products of a creative activity oneself or entrust their development to other enterprises? A company may prefer to limit itself to the production of a master or prototype allowing other enterprises to develop, distribute and allocate its products.
- Is it better to have a simple organization, which may even be a one-man enterprise, or opt for a more complex structure requiring a team of people?
- Is it better to adopt a profit-based structure or a non-profit structure in order to mobilize funds more effectively?
- Is it better to use forms of management with limited liability or opt for a form with unlimited liability?

Obviously, the answers to these questions should be inter-linked. Moreover, the choice of a particular legal form has to be made at various stages in the life of a creative enterprise.

- Like any other enterprise, a creative enterprise may decide to manage all the operations involved in the development and production of a creative product.
- Others some may decide to sub-contract some stages of the development and production processes. For example some of those who set up a mass-production company may prefer to subcontract production to other enterprises (e.g. special effects for movies).



- Finally, others may wish to entrust the entire production and distribution process to third parties through licensing (e.g. some record labels).

When choosing one of the above alternatives, a company will benefit more than its rivals if it has a specific legal form.

The choice of a particular legal form is not definitive. It is quite possible to think of institutional life cycles. In one of the best-known institutional life cycles, a creative enterprise is first constituted in a very simple form, sometimes even as a non-profit commercial enterprise. However later on, the company may find it more profitable to turn itself into a profit-making enterprise, even with unlimited liability, in order to obtain funds.

1. Three Factors Determining the Choice of the Type of Enterprise


1.1. Traditional Determinants of Choice

Three types of variables may come into play to make some institutional forms more relevant than others: transaction costs, funding and moral hazard.

The Transaction Cost Argument

When a company has to come up with new goods or services to boost its activity, it has the choice of producing them in-house or purchasing them on the open market: this is the famous “hierarchy or market” dilemma:

- If the enterprise chooses to produce the goods or services itself, it has to bear a certain number of costs for managing and controlling its activities; such costs are known as internal transaction costs.
- If the enterprise decides to have them produced by others it still has to bear a certain number of costs to supervise the proper execution of the corresponding deal and to find alternative solutions if the deal fails; these costs are known as external transaction costs.



The key point is to minimize transaction costs and to choose the mechanism that can do so more efficiently. If internal transaction costs are lower than external costs, it would be quite normal to opt for in-house production. If, on the contrary, external transaction costs are lower than internal costs, the market solution seems more logical. However, even if the company decides to turn to the market there will be transaction costs. To reduce them the company will have to opt for cooperation and, for example choose a contractor belonging to the same partnership, cluster or district.

Normally, enterprises are expected to decide according to their relative production and transaction costs. However in the case of cultural enterprises the issue of management may influence this choice.

Funding and Moral Hazard

The need for funding may influence the choice of an entrepreneurial form. This argument is well known in the management of cultural enterprises which is the most important example of a creative enterprise. Since there is a high degree of uncertainty about future demand for their products, these enterprises have to cover their irretrievable or 'negative costs' by mobilizing money coming in from consumers, patrons and banks. Patrons are however prepared to pay or share production costs only if they are in no doubt about the way their contribution will be used by the producer.

- Any management strategy seeking to maximize profits will therefore raise doubts about its motives as patrons are bound to think that what they have given to the producer will be used to maximize his profit instead of being used to make the product artistically viable.
- It would not be acceptable for the producer to pocket the surplus without effecting any improvement in the product's quality or attracting a larger audience. An opportunistic producer will use part of this money to swell his profits without improving the service or product to a given level of activity or quality, whereas his partners expect him to use such surplus for everyone's benefit.
- This is why consumers and patrons prefer to deal with non-profit institutions which, by definition, are above suspicion. Consumers expect their



subscriptions or membership fees to be used to increase production and improve quality. Patrons will agree to subsidize productions only if they increase artistic consumption (and artists will be willing to share risks provided that this increases the viability of the artistic product).

It therefore follows that the presence of non-profit institutions in the artistic domain is not a matter of chance.^{26 27} There are, of course, other motives that can explain the importance of this type of management,²⁸ viz. the democratization of culture by charging affordable prices, provision of a wider range of services to satisfy diverse public tastes and involving the public by encouraging voluntary service which is difficult to imagine in a commercial organization.²⁹

Although this argument has been logically verified in the case of cultural enterprises, it may arise in the case of many other types of enterprise, whether creative or not.

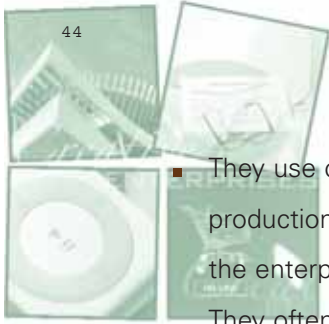
1.2. Elements Specific to Creative Enterprises

The Value Shop Logic: Management of Creative Skills

As was pointed out earlier, the essence of creative enterprises lies in the presence of value shop logic. Creative enterprises should look for solutions that are appropriate for new situations in order to satisfy the demands of specific consumers by mobilizing creative talent. Finally, they must quickly move from a single type of production to a different method as this would help them to change their productive combinations and the type of creative skills they use very rapidly. This has two consequences, one affecting the size of the organization and the other its form:

- Size should be such that these special talents are not bureaucratized and their creativity is not stifled by too many administrative obstacles and controls.
- They should be managed in such a way that their creative abilities can turn their projects and their talents to good account.

This last point is very important because the management of creative enterprises can be quite complex. Creative enterprises are characterized by the tension that can exist between purely creative and economic logic or between creation and innovation:



- They use creative talents which cannot be regarded as mere generic production factors. Creative or skilled persons want to play an active role in the enterprise and participate in the definition and design of the products. They often join the enterprise as partners or associates even if their contract states that they are employees.
- Creative enterprises have an internal network consisting of their personnel as well as an external network comprising *stakeholders* and/or *shareholders* who are usually members of the board of directors. The manager coordinates the interface between these two networks.

Board members normally define the strategy to be implemented by managers and staff. Any conflict between the two networks can create unsustainable situations, making the manager's role a strategic one: he/she has to explain the board's wishes to the staff and conversely inform the board of the staff's opinions and experiences.

This does not mean that a creative institution is bound to be in a permanent conflict situation although these points are important. In such cases:

- The enterprise's statutes must state its basic objectives as precisely as possible and should serve as a permanent reference for all concerned.
- Information about the nature, costs and utility of the cultural products or services delivered must be very clear and should be constantly updated.
- Relevant compromises will have a long-term rather than a short-term perspective.
- The manager should act both as a mediator and a leader.

The Risk of Copying

Many creative enterprises offer products having significant intangible components that face the risk of being copied. When a producer launches a new product, he is the only one to do so. However this product can soon be copied by other producers who have to bear only the reproduction cost without having to bear and amortize the negative cost or the cost of creativity. They will thus be able to sell it at a much lower price than the original and that could easily drive the original producer out of the market. In the long run, this means both an individual and social loss since the creator has negative incentives.



Is there any solution to this problem?

- The first strategy is to modify the product constantly in order to be ahead of the copiers and to deter consumers from purchasing copies.
- The second strategy involves bundling which means associating the good exposed to the risk of copying with another good that can be copied only with great difficulty or at a very high cost. For example, instead of selling software which can easily be copied, it would be advantageous to sell it with a device without which the software cannot be used. The best possible illustration is that of video games which can be played only on a particular 'station' and vice-versa.
- The third strategy is to increase considerably the cost of making copies so as to ensure their quality drops when they are produced cheaply.
- Another strategy would be to reduce the remuneration of artists and other employees, although this is short-sighted because by doing so the enterprise will never be able to attract and keep the required talents.

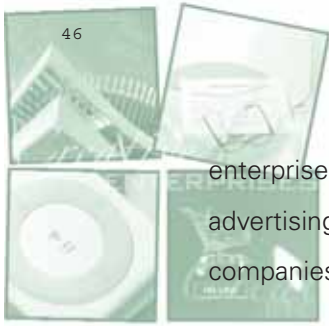
None of these strategies is very easy to implement or satisfactory. Another more radical solution for the company is to use other enterprises to develop a creative product, instead of developing it itself. In such a situation, the creative enterprise does not go beyond its value shop logic. The corresponding value chain may still be exploited by the company which will benefit from a licence to produce the creative good.

2. Licensing

Does a creative enterprise always develop products that can be copied and reproduced at a very low cost by its competitors?

As mentioned above, a creative enterprise may prefer to transfer the development of its ideas for new products to another enterprise instead of doing the work itself.

- For example, a record label which owns the master of a piece of music can licence it to a wide variety of clients such as record producers, film or TV



enterprises for inclusion in the soundtrack of a film or a TV program, advertising agencies for use in an advertizing campaign, mobile phone companies for delivering new ring tones, etc.

A musician can also licence his music to a record label. It is becoming increasingly common for musicians to try to license their music to a label for a fixed term thereby retaining their rights over it and gaining greater control over their master, production and distribution than previously.

Licensing can also be a useful way of gaining access to new markets for cultural entrepreneurs who do not have the ability or the means to break into foreign markets on their own. In such cases, a licensee may take care of the organization and implementation of all the adaptations required for entering the new market, e.g. legal commitments, translation of labels and instructions, subtitling, etc.

Thus three types of contract are in use³⁰

- The licensing contract: this represents the permission given by the owner of a literary or artistic work to another person or legal entity to produce the corresponding creative product. In the field of copyright, a licence is generally understood as the authorisation given by the author or owner of the copyright (licensor) to the user of the work (e.g. licensee or publisher) to use it in a manner and according to conditions agreed upon between them.
- The assignment contract: this is the sale by an owner of all his rights to a new product and the purchase of the corresponding rights by another person or legal entity.
- The know-how contract: this could be an independent contract or part of a licensing contract that allows another party to use the know-how in either a tangible (document) or intangible form (advice).

In the case of copyright industries, the licensing contract is the more usual. Some types of contract may nonetheless be prohibited. For example, under some copyright laws that consider the author's economic right as inseparable from his moral rights, copyright cannot be assigned at all. For example the assignment of the author's rights to publish the work may not even be possible in this case.



In addition, it is worth emphasizing that only the economic rights may be transferred, as moral rights always remain with the author.

The licensing agreement combines three basic elements: identification of the parties; the scope of the licence and remuneration.

Identification of the parties

The definite identification of the parties concerned is necessary to prevent any future controversy about their identity and liabilities.³¹

- This could be important when the licensees are a group of persons or institutions.
- This could even be very important when the expected markets include foreign markets, which implies a clear identification of the beneficiaries of the rights in such markets.
- Finally, this could be important when public entities or state enterprises are parties to the agreement, including enterprises established as a result of a joint venture with a foreign legal entity.

The scope of the licence

When the parties negotiate an agreement, they usually proceed on the understanding that a transfer of copyright is necessary for an enterprise to develop a product. The purpose of the transferred copyright is usually stated in the initial part of the licence agreement often referred as recitals or “whereas clauses”, or “background information”³².

It is then necessary to state precisely the scope of the transfer in terms of duration, geographical specification, varieties of supports, etc.

Example: in a publishing licence:

- The licence can be granted for one edition only or for a fixed number of subsequent editions. This must be very clearly stated in order to prevent any future litigation on the definition of an edition (the maximum number of copies (print run) is usually fixed in the contract).



- The languages of the authorized edition must also be specifically mentioned.
- The area of publishing and editing should be clearly defined.

It is necessary to specify the subsidiary rights permitting the distribution of the published work. The licensee will acquire through this licence certain rights for communicating information about the work or licence others to do it. These subsidiary rights may then include:³³

- the right of previous and subsequent publication of extracts from the work in the press;
- the right to publish parts of the work in one or more successive issues of a newspaper or a periodical (serial rights);
- the rights to publish an abridged or shortened form of the work (digest rights, cartoon strip rights);
- the right to read extracts from the work in radio or television broadcasts;
- the right to include the published work or a part of it in an anthology;
- the right to arrange for paperback book or book club editions subsequent to the standard trade edition.

The licensee or publisher may also have to make certain commitments:

- He cannot use the right to bring out a version that is directly or indirectly an adaptation of the original and which would mean that he has overstepped the right of publishing the work and communicating information about it.
- He must produce a precise and faithful translation done at his own expense.
- He must ensure that the title of the work and the name of the author appear prominently on every copy produced.
- He must provide for the efficient promotion of the work at his own expense.

Remuneration

The price of acquiring the intellectual property will depend on various factors. In most cases, compensation is mainly monetary and in three forms:³⁴

- Royalties or post-calculated recurring payments to be paid outright or in instalments, the amount of which will be calculated according to economic use or results.



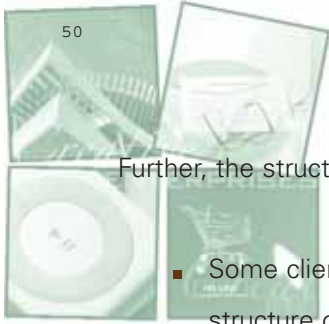
- Payment of a lump sum or pre-calculated payment to be made outright or in instalments.
- Fees or compensation for services and assistance.

These forms may overlap but the most commonly-used form is copyright, sometimes with additional payments of a lump sum. There are some significant differences between them:

- A lump sum means that the licensee has to bear the entire risk and pay the amount irrespective of the project's success. Whereas, in the case of royalties the risks are shared between the licensor and licensee as the earnings of both will depend on the project's success.
- A lump sum can be a strong incentive for the licensee to develop the activity since he will benefit from any surplus. On the other hand, the incentive is lower in the case of royalties since the licensee has to share the profits arising out of his own efforts.
- A lump sum may be more profitable for the licensor than royalties from the tax point of view. In the first case, the licensor has to pay the tax on the basis of the sale while in the second case the tax is calculated on the basis of earnings. Nevertheless, depending on the prevalent taxation laws, it may sometimes be more advantageous to be taxed on the sale than on earnings.

3. Choices of Institutional Forms

In the absence of a clear structure, advance planning and informing the appropriate "authorities," things have a nasty habit of going wrong: the box office earnings may be lower than expected, a grant may not be received, it may not be sufficient or it may come late, and underlying tensions between artistic talents and generic talents may surface. The basic structure on which the cultural enterprise operates will then be a determinant since it will contain provisions to prevent or solve such problems.



Further, the structure of the enterprise may be important for other reasons:

- Some clients or stakeholders will be concerned about the institutional structure of the enterprise since it conveys a lot of information about its type of management.
- In some countries, it is easier to obtain public or private subsidies if you have the cover of a non-profit organization.
- A growing enterprise can be obliged to change its institutional structure, for example when it needs funding from an external source. Further, the question of institutional design and governance is not static. It is dynamic as a cultural enterprise has a life cycle.

Whatever the perspective, it should be pointed out that the institutional design will always depend on the legal and judicial environment. Hence the prospects open in one country may not be available in other countries. We shall therefore consider the principal types of institutions in order to analyze their advantages and disadvantages without referring too much to specific legal frameworks.

When choosing a specific form, it is necessary to consider several elements:

- The utility function of the initial partners;
- The need for funding which generally gives rise to a very open structure where accountability is clearly defined;
- The specificity of creative skills may favour a very simple structure where the activity is contracted out to specific talents;
- The nature of the activity; operating for a limited number of performances a year is totally different from producing a very large number of books or records on a continuous basis.

Three main choices are possible when creating the relevant institutional forms.



3.1. The Self-Employed Individual or Incorporated Enterprise: The Freelancer

For a creative person seeking to generate a source of income from his/her own creative skills, freelancing could be the answer. Most creative people are unable to make a living from the sale of their work alone. In such a case, becoming a freelancer enables them to manage their finances more effectively by earning an additional income from short-term assignments. Journalism, photography, the performing arts or and web design provide such opportunities. The person can register him/herself as self-employed, depending on the local legal framework. He/she is hired by enterprises (or other persons) to work on projects for a fixed period of time under a fixed contract. He/she can be compensated either by the hour or by a fixed amount to execute a particular project within an agreed period of time.

This system has many advantages:

- It gives a great deal of autonomy to the person who is able to utilize his/her own talents profitably.
- It gives him/her the opportunity to work on different subjects or with different enterprises allowing him/her to capitalize on his/her competence. This freelance work may eventually open up the possibility of finding a suitable full-time job.
- In some countries, it is also possible to claim a tax refund on expenses incurred.

The disadvantages are equally important:

- The risks are borne mainly by the freelancer. Not only is the nature of his/her work irregular but depending on the specific contract, he/she may lose the benefits of his/her efforts (ex: if the freelancer falls into the category of 'work for hire', the intellectual property rights over his productions belong to his employer).
- The transaction costs incurred when looking for work, negotiating terms and conditions and ensuring that contracts are fulfilled may be quite high and may recur frequently.

The decision to become a freelancer is equivalent to setting up one's own business. Irrespective of the subjective elements that can influence this choice, it requires some guidelines:

- One should be able to determine whether one's inherent skills and talents can be used on a freelance basis. These should not compete with other talents that are frequently used by existing cultural enterprises.
- One should develop an active strategy of screening information sources and opportunities.
- One should understand what potential clients require in terms of price, quality, delivery and customer service and be able to accept the challenge and satisfy their requirements.
- One should develop a clear project brief with a separate note explaining what exactly is expected, the delivery schedule and related costs.
- One should fix prices with reference to cost, competition, the expected margin for investment, time between two freelance contracts and profit.
- One should be careful about the ownership of the copyright of the work undertaken.
- One should always be on the lookout for new clients either by contacting them directly or by teaming up with other interdependent cultural talents.
- When a recruitment agency is involved, one should find out if it is better to work on a semi-freelance basis or to work independently.

To be a successful freelancer, it is necessary to answer the following psychological questions:

- Is the person able to work on his/her own and motivate him/herself to find new clients and opportunities on a continuous basis?
- Is the person capable of taking risks, undertaking prior research and adjusting to best and worst case scenarios?
- Is the person able to negotiate effectively with clients, ensure that he/she gets paid on time and keep going even when things are difficult?
- Is the person a good communicator, capable of discussing briefs and meeting the client's expectations?
- Is the person aware of the financial and legal implications of being self-employed and able to keep abreast of the relevant paperwork?



The demand for freelancers may be explained by the specific needs of some enterprises:

- To benefit from a very specific skill that the enterprise does not have and does not want to recruit on a permanent basis. For example SMEs find it advantageous to employ freelancers to avoid recruiting extra staff.
- To make the maximum use of specific talents for a limited duration either because the amount of work is too modest or because it is very seasonal (i.e. festivals).

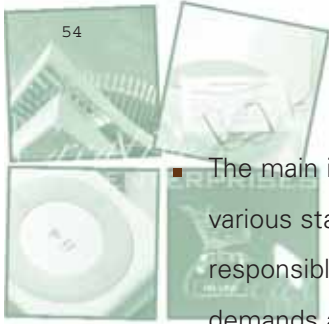
The freelancer should be distinguished from the sole trader, namely a person who is self-employed in such a way that he/she is in complete control and bears all the profit or loss. As opposed to the freelancer, the sole trader works for him/herself and usually has a permanent business set-up.

Should something go wrong and people demand to be paid when there isn't enough money available, then he/she is solely responsible for repaying all debts.

3.2. Profit-based or Non-profit Enterprises

In some enterprises, people have joint control and act within the framework of a particular institution whose legal structure depends on the country's laws. The main principle is to work without profit. This could be misleading since there are two forms of non-profit: either where there is no profit whatsoever or where there may be some profit to be subsequently shared by the participants (as in the case of a cooperative organization).

- In both situations the main challenge is the same: the structures usually benefit from substantial tax advantages since they are motivated by social objectives and not monetary gain. These tax advantages are usually in the form of exemption from value added tax or tax rebates and other concessions. Usually, they do not enjoy any advantages in terms of social welfare or unemployment benefits, but this may differ from country to country.



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- The main issue remains the one related to their governance. They co-opt various stakeholders and donors into their governing body which is responsible for deciding their goals. These stakeholders can make certain demands according to various utility functions. The main problem is that there is no clear utility function in a profit-based organization where profit is the sole basis of utility. There may also be disagreement about the existence of a surplus or its use: This is where the issue of governance comes in. Usually, potential conflicts pertain to the number of users to be served, whether this number should be maximized, the quality of service to be delivered and whether it should be improved. Then there are other issues like conservation and the budget that should be allocated for it, research activities to be undertaken, etc.

These non-profit enterprises may assume various forms:

- Association: this is the most common structure where people who are members of the group can be held personally liable for the organization's contracts and debts.
- Trust: this is the preferred structure when there is no need for members. A trust is not usually a suitable structure for an organization which has fixed premises or employees or enters into contracts, as the trustees can be held personally liable for the organization's contracts and debts.
- Charity indicates a status rather than a form of legal structure. People running the organization (trustees) must use its income only for very specific purposes, for example for promoting cultural activities in an underprivileged neighbourhood. Many donors tend to trust these structures because they believe their donations will not be used for the trustees' own benefit (as may happen in other forms of NPOs). In some countries, central or local government may contribute funds to these charities according to specific regulations.



3.3. Limited or Unlimited Structures

A limited enterprise has a separate identity in law from that of the people who set it up and it is usually a profit-based organization. The best example is a commercial enterprise where people buy shares and hope to receive a share of the profits in the form of dividends. It is controlled by a board of directors, whose function is much easier to understand than that of NPOs.

Contracts in the Record Industry

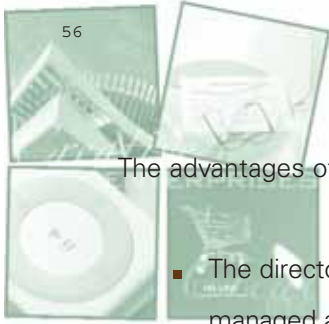
The contracts in the record industry testify to the closeness of the inter-industrial relations between creative companies in the recorded music sector.

The editing contract binds the author to a graphic or music editor. The author yields his intellectual property rights for a fixed period to an editor who commits himself to promoting and exploiting the recording. The graphic editor receives about one third of the royalties.

The exclusive recording contract or artist's contract is concluded between a performing artist and a producer who finances the recording. The artist surrenders all his/her rights to the recording and its future exploitation. On the other hand, the producer commits him/herself to financing the recording and agrees to share the profits and royalties.

The licensing agreement is a contract signed between the producer and a gramophone editor to execute the pressing and distribution of discs for a period generally not exceeding five years. The producer can expect 18-22 per cent of the selling price if the gramophone editor takes charge of the promotion or a higher percentage if he does it himself. It should be noted that an increasing number of licensing contracts are now signed directly between the artist and the gramophone editor.

It is necessary to resort to a distribution contract if a gramophone editor does not have his own distribution network. He is thus obliged to sign a contract with a distributing company and the amount paid to the latter varies between 35-40 per cent of the wholesale prices.



The advantages of such a structure are many:

- The directors' responsibility is covered by the company as long as it is managed according to the laws in force at the time.
- Banks are generally more willing to lend funds, although this is not always true: if a small cultural enterprise wants a bank overdraft or to lease premises, the bank manager usually insists on a personal guarantee from one or more of the company's directors.
- The enterprise will benefit from numerous incentives usually offered by the government to various enterprises, both cultural and non-cultural.

On the other hand:

- The costs of setting up an enterprise can be relatively high.
- There are important constraints in terms of financial documents and procedures and also procedures related to decision-making (for example, articles of association or bylaws).

That is why many cultural enterprises prefer to start as non-limited companies and adopt limited status as soon as they have grown sufficiently and have established a stable relationship with several suppliers when their demand for funds increases and obliges them to deal with the banking system. They are sometimes reluctant however because they do not want to share their artistic assets, either formally or informally, with other institutions or people.

If the creative enterprise takes the form of a limited enterprise, some guidelines should be observed:

- They should define the enterprise's purpose as clearly as possible since many fiscal advantages will depend on whether it is suitable.
- They should define the status of the directors, how they are nominated, the length of their term, their potential financial compensation, whether there is any overlap with other functions and incomes, etc.
- They should define the way the board functions, the frequency of meetings, the documents provided, the decision-making process, etc.
- They should define the conditions under which people can buy shares.



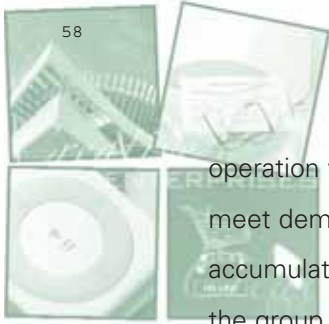
There are other types of structures:

- *Enterprises limited by guarantee:* This is a useful structure commonly adopted by arts organizations. In such a structure not every member owns a share but pledges to pay a small sum, usually €10-20, if the enterprise has to be wound up because it is unable to pay its debts. The members do not expect to benefit from the success of the enterprise. Any profits that are made are ploughed back in. In fact, it is very similar to the traditional NPO, but in every other respect this organization is like a limited company with shares.
- *The limited liability partnership:* This option offers the flexibility of a partnership within a corporate, legal entity where directors are referred to as members. An LLP differs from a limited enterprise in that members' agreements are confidential and it is taxed as a partnership irrespective of whether the profits are distributed to members. Many of the tax advantages of a sole trader partnership are available through this option. While an LLP is liable for the full extent of its assets, individual members can limit their liabilities.
- *Partnership* is a business where two or more people own an enterprise, work together and share the profits or losses on an agreed basis. Partnerships can be between enterprises and/or people. In some partnerships, enterprises often prefer to remain behind an individual so that they are not held accountable for the failures of the partnership.

3.4. Creative Networks, Clusters and Districts

Creative enterprises must be continuously updated to incorporate new references and knowledge. When they expand their markets considerably, globalisation makes constant demands on creativity and engineering capacities, but it also offers more diversified markets in which their products can be promoted. This creates a great deal of uncertainty and a high level of risk which can explain some forms of clustering.

- When the uncertainty is limited and there are stable businesses that can be networked, enterprises will have an interest in doing so. The network's



operation will reinforce trust and the capacity of each of its members to meet demands under the best possible conditions. This “trust capital” will accumulate to the point where none of the partners has an interest in leaving the group or in being excluded from it, as would be the case if a given partner were to act opportunistically to the detriment of the others.

- When uncertainty is high (and cannot be reduced by accumulating information), for example when consumer tastes change or are found to have been misinterpreted, the situation will be different and the district or cluster formula will be more appropriate than the network. Networking will no longer work, for there is little reason to believe that the partners in a network can cope with radical changes. On the other hand, geographic proximity may provide “weak ties” that can be drawn upon immediately to deal with unforeseen changes. Thanks to their close proximity, there will be a certain flow of information among these companies about their respective possibilities. Moreover, there is a wide variety of production factors that can be more easily gained.

The importance of ‘proximity’ will depend on the size of the enterprises or the stage of their production processes.

- Less recent enterprises tend to concentrate on distribution and will limit their production activities to exceptional products of the “blockbuster” type.
- Small, new enterprises will be engaged primarily in production and for them their geographic location will be important. There must be constant tradeoffs among different production factors, artistic or other resources and a close link between present production activity and preparation for the future.

We can also have clusters at the international level (video games, labels, etc.) as well as cultural districts in very specific and well-defined local areas (arts and crafts, contemporary art, etc).

However networking has its own problems:

- Diffusion of responsibilities and lack of accountability: Although protocols or contracts may define the role of each partner as closely as possible, the result may not be clear. Whereas a partnership is presented as a means of



improving things, it can become a source of confusion and, in the long term, lack credibility.

- Unequal sharing of advantages and costs among partners.
- Free-rider or windfall-seeking behaviour: some partners only participate in "public provision" long enough to extract associated advantages without contributing to the corresponding costs.

4. Recommendations

- *When considering protecting or licensing products, creative entrepreneurs should think not only of the core product but also of possible derivative products.*
- *Every licensing situation and client relationship is likely to be different, so each will need a separate and unique legal agreement. When negotiating a licensing agreement, some points should be examined systematically:*
 - *What are the exact rights granted by the agreement?*
 - *For what period does the licensee want the licence? Ten years may be too long but two years too short for the economic amortization of the investment by the licensee.*
 - *For which geographical area does the licensee want a licence? Does the licensee have the necessary marketing knowledge to represent your cultural product outside his own territory?*
 - *Does the licensee have the option of renewing the licence at any stage during the term? For example, does a cultural enterprise have the possibility of asking the licensor for an additional cultural product?*
 - *Is the licensee offering an advance payment for the rights to produce your cultural product under s licence? Is that advance offset against future royalties? All advances should be non-repayable in the event there is no recovery. For example, if the advance is €20,000 and the licensee makes only €10,000 during the period, he cannot recover €10,000. The licensee has to bear the risk.*
 - *What is the rate of royalty or percentage offered on the sales of the cultural product made by the licensee? How will it be calculated and what expenses will be deducted or will need to be paid from this amount?*



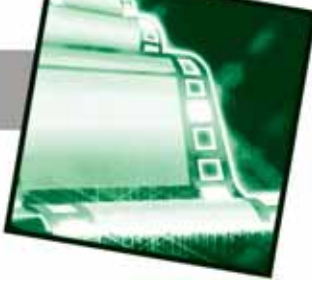
CHAPTER 4

Choosing Products and Fixing Prices

Choosing the right product and fixing an appropriate price for it determine the success or failure of a creative enterprise. In spite of the intrinsic novelty of such products, the different stages of the decision-making process are often underestimated. Since a creative enterprise produces a “unique product,” or because the effects of fashion and snobbery influence the demand for such a product, some observers believe that price is not a determining factor in the decision to buy.

The following serious errors could occur:

- The unique nature of a creative product does not protect the producer. Competition exists as there are many other ways of spending time or money on other substitute products. Potential buyers can thus be drawn away and this will prevent the company from recovering its negative costs.
- The consumption of some creative products implies many items of additional expenditure (transport, purchase of complementary equipment, etc.) As a result its ‘total price’ might represent an obstacle for consumers.
- Users may have doubts about the relationship between the total cost of the product and its quality. If the price is too low, it will give a negative message about the product’s quality, whereas an excessively high price will deter customers.



1. Defining the “Product”

Several issues make the product’s definition and scope very important:

1.1. Information and Product Design

Since novelty is an intrinsic characteristic of the products of creative enterprises, the producer should be able to allay the consumer’s uncertainty about the product’s quality. Quality in this case means not only functionality but also includes many other more or less subjective characteristics. Hence:

- It is advisable to start defining a product by test-marketing it continuously to find out the possible reactions of potential consumers.
- It is advisable to integrate into the product’s presentation any information that makes it easy to appreciate its quality. In the domain of cultural goods, the most common example is the inclusion of famous performers in stage shows, audio-visual programs, etc.
- The product definition process should pay attention to the product’s presentation, such as packaging. Many creative cultural goods are both aesthetic and semiotic and these characteristics have to be considered as to content as well as the form in which the content is presented.
- It is advisable to make sure that the positive image acquired by a company through its previous products is not tarnished by the new product. The image creates confidence in the consumer’s mind and reduces any uncertainty about quality. That is why book publishers bring out collections of books: they can thus address different markets and provide them relevant information about the quality, without compromising their own image.

1.2. Indirect Demand and Two-Tier Markets

Creative products are sometimes sold simultaneously to a variety of purchasers. An audio-visual program is sold simultaneously to consumers (for example pay television) and advertising companies (in the case of commercial television).

- The principle of the two-tier market is a very important phenomenon and, in some cases, it is possible even to refer to multiple markets (consumers,



advertisers, patrons, etc). This provides an excellent opportunity because the same product can provide several sources of funding.

- In the case of commercial television the two-tier market is very common. Funding possibilities could even be much wider when a creative good has both intrinsic and extrinsic values. For example, music can be used both for entertainment and therapeutic purposes. The producer's interest lies in identifying the different values that can be obtained from an initial product and market them in the best possible way.

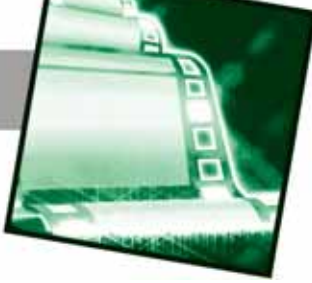
1.3. Ability to Pay and Need for Versioning

The unique character of its products confers a de facto monopoly on the enterprise. It is therefore advantageous for the producer to introduce slight differences in all versions of the product and in their corresponding prices, thus differentiating his own margins to be able to exploit to the full the ability of various types of consumers to pay.

- In view of the differences in the ability to pay, it is advisable to have different versions of the same product. In some cases, it is easy to have a number of different versions with distinct physical characteristics (place, time, outward presentation, additional documentation, etc). In other cases, it may be necessary to create these differences indirectly (for example the possibility of changing a booking). By employing this strategy it is possible not to lose the confidence of the users, who may feel they are being cheated if they are asked to pay different prices for the same product.
- In view of the possibility of multi-sided markets, the company must be careful about the timing of its product launch. It must begin by tapping into the most lucrative side and then move on to the less profitable or more risky sides. In fact the timing and the accompanying conditions define a "series" or a "family" of dependent products.

1.4. Digital Rights Management

The risk of copying due to the existence of intangible components obliges the creative enterprise to market some forms of its product as soon as possible in order to discourage pirates or impose strict conditions for its use.



The Traditional Strategy

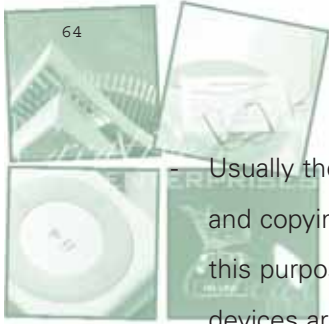
As regards the risk of copying, it is recommended the product be planned in such a way that maximum receipts can be collected as soon as possible before the “copiers” arrive on the market, or structured in such a way that the cost of copying it would be prohibitive.

- The first method is to renew the product constantly to be ahead of the copier (e.g. frequently updated versions of a dictionary). The length of this “period of peace” may vary but it is advisable to make it as long as possible by employing a suitable pricing policy (the product should not be too highly priced at the time of its launch so as to attract the maximum number of consumers and make copying less advantageous for pirates).
- The second method is to tie the purchase of the product that cannot be copied in with another product or accessory manufactured by the company; for example an accessory which is necessary for using the core product. Thus video game companies have created dedicated gaming consoles to prevent piracy which is possible when programs are circulated on generic computers; a technique known as bundling. However it is difficult for small companies to sell a program together with an accessory and they may therefore be obliged to enter into specific agreements or alliances.

Digital Rights Management

Another important method is to incorporate technical devices in digital media (and analogue media released in digital form) that will restrict the use of the product and prevent its unauthorised use. Although in the case of analogue media, the quality of a product deteriorates with each new copy and even during normal use, a digital media product can be copied any number of times without any deterioration in the quality of subsequent copies.

- The aim of digital rights management is to control the use of digital products with the help of technical devices. For example these devices are intended to:
 - prevent the use of digital products outside specified geographical areas;
 - prevent the employment of alternative equipment when using a digital product;
 - prevent the transfer of digital products to other users;
 - prevent copying of a specific part of the digital product.

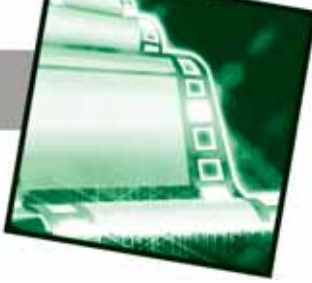


Usually these devices are insufficient by themselves to prevent the illegal use and copying of digital products. It is therefore necessary to enact laws for this purpose. Legal protection is thus a back-up solution when technical devices are circumvented.

- Generally speaking, the expression “Digital Rights Management” refers to the employment of technical means to identify copyright protected material in the digital environment and to restrict access to and use of such protected works or content. DRM is at present enforced by numerous technologies such as specific modification of digital media software. In the case of mandatory access control systems that are now commonly used in place of discretionary access control systems, usage restrictions are enforced by software buried in hardware and software provisions in operating systems or media playing software or sometimes both.

The Architecture of a DRM System

The most common architecture of Digital Rights Management is based on coding. Only a device having the key to decipher the code is able to access the product concerned. The purpose is to make sure that each computer can be identified remotely (by an Internet connection) and in a reliable manner. A “customer – supplier” link permits a day-to-day check of the use and dissemination of each specimen of the product. In general, the supplier sees to it that the contents are protected by copyright (for example music). The customer is the software or peripheral which makes it possible to access this content (for example a multi-media reader or a digital personal stereo). When a person wishes to download a file, the customer provides a single identifier to the supplier. The supplier quantifies the file required by a particular customer. This quantified file is then transferred from the supplier to the customer usually through the Internet. When the person wishes to consult the contents downloaded in this manner, the reader establishes a link with the supplier, which ensures that the person has a valid licence at that particular moment. If so, the supplier transmits to the customer the code for deciphering the file as well as a list of the user’s rights with respect to it. It should be noted that if the link between the user and the customer changes (new software, new computer, new roaming), he will have to request a new licence (which will be issued free of charge).



2. Assessing Costs

The assessment of costs depends on a company's size: the methods of analysing the cost structure of a freelancer (or a company having few employees) and that of a major company are very different. The main difference between creative and mainstream enterprises lies in the fact that the relative share of negative costs is generally much higher for the former than for the latter.

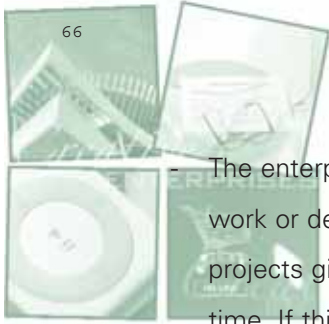
It is necessary to stress one point when moving from an economic approach to an accounting approach for the purpose of analysing the cost structure of a cultural enterprise:

- From an economic perspective, the most important point is the opposition between the initial costs and the current costs. The former have to be borne irrespective of the number of consumers whereas current costs are usually proportional to the number of consumers. However, the accounting approach does not include this difference, but it should be kept in mind since the sustainability of a cultural enterprise depends on its ability to recuperate its initial costs.
- From an economic perspective, the price should be equal to the marginal cost in order to maximize the economic surplus. However in an activity where the initial cost, in this case the fixed cost, is substantial, following such a rule can lead to non-sustainability. Therefore, the accounting approach will have to be considered in terms of 'full cost' rather than 'marginal cost'.

2.1. The General Process

If we consider a creative SME or micro-enterprise, three types of costs have to be identified:

- costs specific to inputs: equipment, hiring charges, delivery and time;
 - general costs incurred by a business, e.g. overheads;
 - costs specific to human resources.
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- The identification of inputs or services that will be purchased on the open market, either directly or through subcontracting, is the first element to be considered.



- The enterprise must also anticipate the cost of meetings, of producing the work or dealing with subcontractors. Records of time spent on previous projects give a realistic idea of how long a comparative project would cost in time. If this cannot be done, it is necessary to add a margin of 12-15 per cent to the costs in case of contingencies and quote a total figure rather than an hourly rate.
- The cost of materials, transport, insurance, subcontractors etc. can be increased by 10-15 per cent to provide for contingencies.
- Subcontracting costs must be carefully calculated before committing oneself. It is necessary to make sure that the subcontractor will keep to the schedule. Subcontractors may quote rates that exclude or include VAT, but care should be taken to include this tax when assessing costs.
- The identification of overheads follows a simple rule. The enterprise should start with its annual overheads and then calculate weekly, daily and hourly overheads by dividing the total annual overhead costs by the number of weeks, working days or hours.
- Assessing the cost of living of the human resources mobilized for the job is an element that must be considered independently of the wage actually paid. In some cases the value of the work can be estimated according to the wage; for example when the employee belongs to a union and benefits from an industrial agreement. In the case of other artists and entrepreneurs matters are however less simple. Usually, it is necessary to start with the monthly or daily living costs, i.e. what the artist and/or the entrepreneur needs to earn in order to live.

The sum of input costs, overheads and human resources on a time basis gives the minimum cost that has to be covered.

Should a profit margin be included?

It is necessary to know if a margin for investment and/or profits should be included in the costs. In the case of many creative products belonging to the cultural domain, this is not done for the following reasons:

- A margin can be considered as a way to offset the high negative cost already borne or likely to be incurred in the future. This draws attention to the ad hoc nature of a cultural enterprise. The enterprise is focused on a project whose



negative cost has to be recovered. For reasons of 'sustainability', it would be justifiable to include a margin of investment considered as a margin for creating, designing and implementing future projects.

- An important profit margin can create doubts about whether the enterprise really intends to maximize the quality of its creative products. Thus it is better to claim that the profit is a consequence of efficient marketing and not an "income" that the enterprise would like to earn at the consumer's expense. If the cultural enterprise calculates profit margins, there may be a moral hazard. Consumers may think the enterprise prefers to increase its profit instead of improving the quality of its product. As already seen, this is one of the reasons why many cultural institutions choose the legal structure of a non-profit organization.

2.2. A Specific Assessment: The Cost of Copyright Protection

Some costs are specifically related to creative enterprises. These are costs that the enterprise might have to bear to acquire all the intellectual property rights from its 'creative' employees or independent contractors. This may be avoided if beforehand the creative enterprise ensures contractually that it will actually own all the future intellectual property rights (ascertains ownership). Otherwise, when calculating its costs, a creative enterprise should include the amount it expects to pay to acquire the intellectual property rights.

- The rights granted by law to the owner of a copyright on a protected work are frequently described as the exclusive right to authorize others to use the protected work. There is no major problem in this regard.³⁵ The main difficulty arises when there is no existing agreement about the amount to be paid for these rights and it becomes necessary to decide on indirect indicators. Usually they can be found in the national laws governing agreements on collective rights management.
- In addition to exclusive rights of an economic nature there are also moral rights. The assessment of these rights is much more difficult because of their nature. They are important for creative enterprises because they can raise certain obstacles during the production process. The only thing a creative enterprise can do in such a case is to think in terms of expectations and include an element of risk in these costs.

3. Price Determination

Pricing cultural products and services has always been a challenge for creative enterprises whether they are profit-making private companies, non-profit or public enterprises. Since non-market financial resources have always played an important role in this field, pricing has often been marginalized compared with lobbying for private or public subsidies. Underestimating price is dangerous; whatever the institution, prices perform many functions:

- Prices give an idea of the value of a good or service because those who demand such a product or service are willing to obtain it for a particular price. From a dynamic viewpoint, when price determination is followed by a steady or even a higher demand, it means that many potential consumers are prepared to make a minimum effort to gain access to the good.
- Income from prices is a source of autonomy and makes the cultural enterprise accountable. Many patrons, or those who sanction subsidies, use the size of a company's market as an indication of the social value of its cultural products.
- Price may help to control the demand for a product and smooth its way during the time the company is trying to reach its maximum production capacity.

3.1. Pricing of Products and Services

There is a significant difference between a product and a service:

- A product is a tangible object that is produced and can be bought and owned by a client. Even if skills and competence matter, they appear to be an intrinsic part of the product.
- A service is a personal relationship where skills and knowledge matter but their quality cannot be fully predicted in advance.

Hence, there is a difference between the pricing of services and the pricing of products.



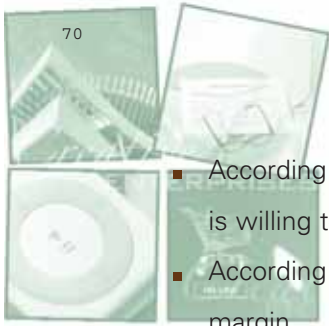
- Since a service is intangible, clients can never be 100 per cent sure of what they are getting for their money. Purchasing is therefore perceived as high risk. Much of consideration is given to those providing the service, their personality and attitude, as people buy people rather than just their services. Customers are likely to be influenced by the opinions of art critics, personal recommendations and word of mouth, so it is important to build up the company's profile and network very carefully, although this does not mean that price will not matter. Graphic design, illustration, photography, the performing arts, web design are some of the sectors that often provide services rather than products.
- Since services are intangible, they are inseparable from the customer in the sense that they only exist when the customer experiences them. Production, selling and consumption of performing arts occur while the show is going on. They are heterogeneous in the sense that the standard of service varies each time depending on who provides it, and this can give rise to some important issues, for example, in the case of opera performances. Services are perishable in the sense that they cannot be stored or used later unless they are transformed into a "canned cultural product". They cannot be owned by consumers since purchasing a service only gives the buyer the right to use the facility, but it does not transfer ownership, which can be done only by copying and transforming the service into a canned cultural product.

3.2. The Basic Approach

Pricing a work is a balancing act as it involves judging how much the market will bear while also making sure that the company's earnings are adequate and cover its costs. The price charged for the enterprise's work or product should reflect its market value (how much the work is worth for clients and/or audiences and what they are prepared to pay). It should also cover the amount spent on producing the work (including materials and time) and perhaps a margin for investment.

The price can be determined in four ways:

- According to the cost: the price reflects the cost of producing the service plus a profit margin.



- According to the demand: the price is fixed according to what the customer is willing to pay for the service.
- According to history: the price is the current market price with an added margin
- According to the competition: the price will be calculated according to that charged by close competitors, or by those who can easily replace the seller with substitute products. It is then necessary to check their website, visit retail outlets or trade fairs and resort to clandestine shopping. Some trade organizations also give an indication of fee levels on their websites.

Since competition and demand are not very easy to identify in the field of creative goods, the starting point should be the value attached by customers to a product or service and what they are willing to pay for it. As a matter of fact, the consumer is interested in both price and quality. Hence lower prices do not automatically mean that the enterprise will sell more because some consumers may think that the products or services are not up to the mark.

What happens if the considered price is not realistic because of high costs? The price could be brought down by reducing the expected profit margin or by decreasing overheads and living costs. The value can sometimes be increased without adding to the cost by reducing the turnaround time which would have a positive impact and would be valued by the customer. At other times, it is better to focus on a niche market even though it may mean slowing down the company's growth expectations.

Other considerations that will come into play:

- The higher the company's profile, experience and brand recognition, the higher the price it can charge.
- Its willingness to work for a specific client or target group would make the company lower its price.
- When dealing with slow payers, the company should increase the price to cover the extra charges and for negotiating future agreements.
- The smaller the number of clients, the greater the importance of face to face negotiations.



Sometimes the price becomes a quotation because of the type of service delivered. This occurs mainly when a service is provided over an extended period at fixed intervals (for example, a subscription). In such cases, pricing is more complex and includes a financial proposal for the entire period of the service. The proposal could include the following elements:

- a design brief and terms and conditions;
- a request to the client to clearly indicate the completion of each stage and perhaps to prepare a separate invoice for each stage;
- an explanation of each stage of the project, what the client will receive at the end of each stage, the final outcome, how the costs of any unforeseen circumstances will be covered and for how long the quotation will be valid.

3.3. Indirect Pricing

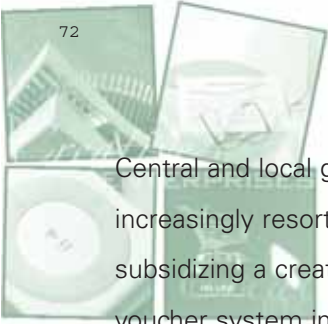
Since it may be impossible to cover costs by charging a realistic price for its product, the company has to look for other sources of potential income to cover purchases, overheads and living costs. There are several ways of doing this, including:

- asking other agents for subsidies;
- monitoring the value of the good or service in order to benefit from any value addition in the future.
- In these situations, there is a possibility of indirect appropriation.

Subsidization

The enterprise will have to look for an income either from public or private agents, although in such a case, it will have to prove that it is capable of supplying goods or services against the subsidy because:

- they become accessible to a category of consumer who would otherwise be systematically deprived of such cultural goods;
- they enhance the image or reputation of an area or a community and produce extrinsic value in addition to intrinsic value³⁶.



Central and local governments (and in some countries even companies) are increasingly resorting to the voucher system. In many countries, instead of directly subsidizing a creative enterprise, public authorities give vouchers to consumers. This voucher system increases the enterprise's accountability, since it has to attract users and demonstrate the quality of its product, whereas a subsidy may be used to offset internal failures without being of any advantage to society in general.

Capitalization

Another way is to locate the successive beneficiaries of such creative products and make them pay. For example, if the illustrations in a book on art are photocopied and sold, the right thing would be to share the income from the sale of these photocopies with the publisher and the author of the illustrations. However, in many cases there are certain exemptions to intellectual property rights, e.g. fair use, educational use, etc., which make it possible to use the products free of charge provided they are not used for commercial purposes. It is for the producer to defend his rights but it may be a very costly matter. That is why European countries insist that when exemptions are exploited for monetary benefit, the user must surrender a part of his earnings to the original producer.

3.4. Price Differentiation: Subjective and Objective Discrimination

When fixing admission fees for creative goods and services, it is necessary to take into account their wide diversity. The nature of users, conditions of use and type of activity are some of the many factors behind the differentiation of admission fees so that the reference fee applies only to a small minority of users. As a result, the information is unclear and may prevent some users from accessing their preferred products or services.

Two main issues should be investigated:

- Differentiation based on traditional subjective criteria related to the nature of visitors poses basic problems and creates risks for management even though it may be valid from the community's viewpoint.
- Differentiation usually based on the objective conditions of visits or the objective characteristics of the product are of a different nature. They are



meaningful and the introduction of yield management (or resource management) may be beneficial.

Subjective Differentiation: A Permanent Ambiguity

Prices are highly differentiated for subjective reasons. An important illustration is differentiation on the basis of age. Price differentiation usually benefits the young (for example, museum admission is free until the age of 18) and is particularly useful for art students many of whom do not have high purchasing power, also serving to encourage artistic consumption among the young. Elderly people, too enjoy the benefit of lower tariffs because of their lower purchasing power and the desire to attract them to cultural services at a time when there are few other users. However, contemporary trends like increased pensions, early retirement, better travel facilities, etc., make these differences less relevant.

What is justified from a social point of view is however less acceptable from the enterprise's point of view. In some countries, enterprises receive subsidies to offset this loss, but the corresponding subsidy is often delayed and minimized, which creates an imbalance. The solution would be to obtain the same results without any change in the fee structure. Vouchers that can be cashed at their face value may be more financially interesting from the enterprise's point of view.

Objective Differentiation

The main example of differentiation-related cultural consumption is the adjustment of admission charges according to the time of visits. The idea is to reduce the flow of visitors during busy periods by encouraging individuals and groups to come when there are fewer visitors.

Like many private business companies, many cultural institutions face the problem of maximum production capacity. Cultural institutions are therefore not in a position to canalise users' demand without modifying their production capacity, which would be very difficult in practical terms: artists' contracts are signed for a given period and the maximum capacity of an exhibition hall or venue is fixed and cannot be increased.

There are three ways of rationing demand so that it does not exceed maximum capacity:



- Stockpiling users: this means that the service will be provided by increasing the waiting period.
- Allowing the quality of the service to deteriorate: even if it is designed for a given number of users, a decision is made to admit a larger number at the cost of both quality and sustainability.
- Restricting access through price adjustments: though it may be permissible for a private company desirous of maximizing its profits, it is not permissible for an artistic institution which is obliged to provide a public service to satisfy the largest possible number of users.

The first two solutions should be excluded as they create costs for using the artistic services and are likely to discourage users who are not used to artistic consumption; there will be a significant fall in the quality of the service and eventually in demand which is very closely-related to quality.

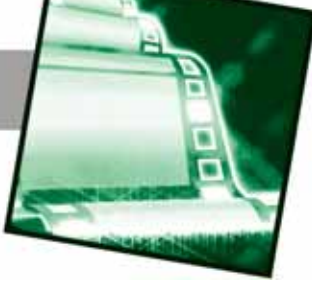
Yield Management

The third solution is certainly easier to manage, even if it increases the traditional selectivity of artistic services. The solution is to shift the demand from one point in time to another by offering more attractive financial conditions. In such a situation, we can claim that the creative company is selling two different services:

- one, a low-priced service available for consumption only during a fixed period;
- the other, a highly-priced service available for consumption during a much more flexible period.

In the first case, the product will be sought by those who have limited financial resources but a lot of time at their disposal, i.e. students, whereas a highly-priced service will be sought by those who have little time but substantial financial resources, i.e. high salary earners.

- The two groups of users should be identified and their numbers assessed as far as possible.
- Once the groups are defined, the problem is to divide the total production capacity into a certain number of sub-capacities, each corresponding to a group and each group corresponding to a different combination of prices and conditions of consumption.



- If the demand is stable in time and known in advance – two conditions that are not likely to be verified – a creative company would not need to proceed beyond this stage. But since the creative company does not have an exact idea of the demand, it has to be able to divide the capacities *ex ante*. For example, if it sells a service cheaply on condition that it is booked in advance for a specific slot, it should be able to decide which part of the capacity should be set aside for this clientele and which part should be reserved for those who come at the last minute but are willing to pay a higher price for this privilege.
- The allotment of capacity to these two groups of users entails several risks: if too much capacity is allotted to users who pay less, there will be underutilisation of the service and loss of earnings; if too little capacity is allotted to users who pay less, they may join the group of those who pay more or they may decide to come on another day or they may even decide to give up the idea of using the service. To solve this problem, it is necessary to know the contingent demand function and its variation over a period of time.

Passes

Another type of objective differentiation is the offer of subscriptions or systematic entry. Visitors are allowed free entry on payment of a lump sum which is obviously lower than the amount they would pay for the total number of visits. This has many advantages: availability of liquidity, lower marketing costs, avoidance of random fluctuation, including fluctuation resulting from critical reviews, increase of sponsorship resources, possibility of developing derivative products since this type of visitor is very prone to buying these products.

Does this system involve organizational costs or financial losses? Apart from organizing special services, the major risk is the financial loss incurred by charging admission fees below the unit cost.

3.5. Changing Prices

It is easier to reduce prices than to increase them. However low prices may attract unprofitable customers and are likely to be associated with inferior quality. Any price increase should be accompanied by:



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- the introduction of new services at the new price level and gradually phasing out older, cheaper services by improving specifications and raising the price;
- the sale of existing services to different markets that will accept the new price level: this solution is used systematically in the case of double-sided markets (or even multi-sided markets);
- the addition of the recognized percentage of inflation at the national level;
- the regular review of prices to ensure that they are optimal;
- the updating of services so that they stand on the same level with the other alternative uses of leisure time;
- a survey of customers' perceptions of the value of the service offered;
- the monitoring of the relationship between costs, prices and turnover.

4. Recommendations

- *The characteristics, forms and presentation of the service should be defined very precisely in order to make the most of the opportunities created by various business and economic models.*
- *The emergence of new digital products should be taken into account as well as the issue of the protection of IPRs through proper Digital Rights Management (DRM) tools and systems.*
- *Costs should be carefully assessed taking into account expected royalty payments.*
- *The various functions of price as a source of receipts, information and accountability should be considered simultaneously.*
- *Various references such as history, competition, cost and ability to pay should be cross-checked before fixing the price.*
- *Attention should be paid to the various sources of differentiation that can dilute responsibility.*
- *It should be kept in mind that in the case of funds received from sources other than receipts, the donor will want something in return.*



CHAPTER 5

Marketing Creative Products

Market development is a crucial factor for the success and sustainability of a creative enterprise. Finding a market allows all players from across the chain, to earn a living from their activity. Therefore, as in the case of many other products, it is necessary to collect the relevant information about:

- existing and potential markets and their various sectors in terms of income, location, education, gender and age;
- relevant channels in terms of product definition, price, promotion and distribution.

1. Specifics of the Marketing of Creative Products

Various management approaches have been suggested to deal with creative products because of their novelty and the corresponding asymmetry of information.

For example, some authors stress the importance of “permission marketing”^{*} as opposed to “interruption marketing.”³⁷

- Permission marketing is when customers give the enterprise permission to market them.
- This is the opposite of traditional marketing that works by attracting customers.³⁸

^{*} Refer to Glossary.



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- Nobody would watch television only for the commercials and nobody would flip through a magazine only to look at the advertisements. But in the case of permission marketing, customers look forward to hearing from enterprises. So the latter have to develop something that the customers would find valuable enough to obtain permission from their customers to contact them on a regular basis. This form of marketing is not new and many enterprises already practice it. However in the case of the creative and/or content industry faced with the challenge of providing precise information about a totally new product, it may be useful to develop this form of marketing through e-mail and blogs.
- Nevertheless, this switch between interruption and permission is not enough to characterize the issues related to the marketing of creative or content products. We have to start with the reasons why such marketing may be fundamentally different from traditional product marketing.

Is the consumer of creative products manageable? Is his behaviour foreseeable? Is the relevant information available in a manner in which it can help consumers to make the best choices? These characteristics could apply to an individual as an end consumer.

- *The consumer of creative products as a communicator:* creative objects are and have always been central to communication through words, signs and images. At the core of the image of the consumer as communicator lies the idea that creative objects may embody a system of meanings through which he expresses himself and communicates with other consumers. He buys things not because of what they can do for him but because of what they mean to him. The recognition that creative goods are part of a communication system opens many possibilities of explaining the insatiable character of modern creative consumption without mobilizing concepts such as greed and envy and explaining why people may sometimes be prepared to forego necessities in order to buy luxuries.^{39 40}
- *The consumer of creative products as an explorer and identity seeker:* being true to oneself as a consumer means being eager to browse and explore a vast number of consumer products, ranging from books and magazines to DVDs and products of the fashion industry. This type of exploration signifies



the recognition of difference. The creative consumer/explorer is looking for tiny clues and divergences, for signs that a new fashion may be on the point of emerging, that a new source of pleasure has been discovered or that a new marker has been born. Today mass media shapes our perceptions and saturates our physical and mental spaces with images and sounds. Thus identity becomes a major and continuous preoccupation for every individual and self-identity becomes a pondered, organised endeavour.⁴¹ So the creative producer has to take such motivation into consideration not only when designing creative goods but also when planning their delivery.

- *The consumer of creative products as an artist:* if we consider an individual consumer, his/her needs and desires represent very different motivational principles. Hunger can only be satisfied by food but desire can flit from one experience to another. While needs are tied to objects, desires can wander in a world of fantasy and imagination. Then the individual becomes an artist of the imagination, someone who takes images from memory or the surrounding environment and rearranges them and otherwise improves them in his mind in such a way that they become distinctly pleasing.⁴² The cycle of desire comprises acquisition, use and disillusion, and renewed desire is a general feature of modern consumption that applies to romantic interpersonal relationships as much as to the consumption of creative products such as clothes, music and video games.
- *The consumer of creative products faces uncertainty:* the inherent novelty of a creative product initially leads to uncertainty about its quality and ultimately to satisfaction. It is therefore advantageous for the producer not only to inform consumers about the existence of these products but also to associate elements (e.g. critical reviews, advertisements, cartoon strips, samples, etc) that make them more comprehensible to consumers who can then draw satisfaction from them.⁴³
- *The consumer of creative products and moral hazard:* consumers benefiting from a minimum of coherent information can have doubts about the producer's behaviour and suspect him of using all the earnings he receives for his own benefit. Thus, if consumers have any doubts, they will not buy the product; this is an example of anti-selection.



It therefore becomes necessary to enrich the marketing approach with personalized and subjective elements. In addition to the traditional methods of segmentation, we must take into consideration the specific consequences of variables like the ability to decipher and use information, the existence of digital communities which are used as a lever of positive impact, etc.

Creative marketing will then comprise several stages:

- Identification of relevant target or consumer groups.
- Analysis of meeting points or interfaces with the various consumers knowing that the perception of quality may vary depending on the media used.
- Inclusion in the “sale” contract of provisions anticipating the importance of intangibles and thus the protection of intellectual property rights.
- The adoption of a strategic marketing plan which, in extreme cases, can become a fundamental guideline for the enterprise.

2. Analyzing and Segmenting Consumers

Building relevant market segments consists of four steps:

- Deciding on the most relevant factors for a particular type of consumer.
- Understanding the process used by the consumer to analyse the advantages of the creative product that is being proposed.
- Screening processes that will motivate the actual decision to purchase or not.
- Studying the divergent situations created by the previous steps in order to gather potential consumers into target groups for marketing purposes, i.e. to define the relevant segment.

2.1. Who is the Real Decision-Maker?

Terms like “public”, “user” and “consumer” are used indiscriminately when marketing creative products. However, it seems necessary to define them as their exact meaning is far from evident. By “public”, we refer to all those outside the service who are interested in its functioning. We can include under this term:



- clients: they give orders and decide what services are to be rendered;
- prescribers: they recommend the use of a particular product;
- direct users: they use the service;
- indirect users: they may or may not benefit by the existence of the service without using it directly;
- funding agencies and taxpayers.

Depending on the nature of the creative product or service, there can be different combinations of these categories and sometimes even a change in their roles.

- The simplest situation is obviously the one where there is confusion between the client and the user, which is generally the case for products of creative industries.
- But in another situation, there will be differences. For example in the heritage domain (monuments and museums), although direct users (visitors) and indirect users (those who are dependent on visitors for their living) come to mind immediately, we cannot afford to ignore the local population who are taxpayers, members of associations supporting the museum, who belong to the categories of both prescribers and fund-raisers and, finally, NGOs and advisory bodies who will make sure that people visit the monuments and also play the role of prescribers. Since each of these groups has expectations and specific demands, it is all the more difficult to determine their requirements and evaluate corresponding responses.

2.2. From Taste to Behaviour

The acquisition of a creative product or service is often only an input for producing the desired usefulness or satisfaction. Thus, demand actually depends as much on monetary as on non-monetary resources like time and information needed for pursuing this activity, expenses associated with consumption, etc. Moreover the accumulation of experience and investment in information can be decisive factors in decision-making, e.g. when it is necessary to have access to specialised journals, listen to critical reviews and follow specialized programs on the radio or television.

What are the variables that can explain these differences in the behaviour of users?

These individual variables are related to three types of risk:

- Functional risks: will the product fulfil the user's expectations when he is not able to test its quality in advance?
- Economic risks: there are costs associated with the use of creative products in the form of expenses incurred to use them as well as compensation for loss.
- Psychological and social risks: this relates to problems the use of a service can create for the image that we have of ourselves or that others have of us. The use of services can be either flattering or degrading.

2.3. How Does a Consumer Decide?

The decision-making process shows how the decision will be taken. Considering that creative goods are associated with novelty and uncertainty, it is possible to identify four decision-making processes related to consumption:

- The cognitive process: the traditional decision-making process where the consumer acts rationally on the basis of the relevant information at his disposal.
- The subordinate process: if the user thinks he does not have the necessary competence to undertake a cognitive process, he will opt for a subordinate process which involves imitation, recommendation or deference. In this case, a decision is made under the guidance of a third person who is supposed to know which good or service should be used.⁴⁵
- The affective process: services are not considered from the functional or objective point of view but their importance lies in the sensations or emotions they are capable of arousing.⁴⁶
- The habitual process: comes into play when the consumer's level of involvement is very low and where the exercise of will or choice involved in the subordinate process is often absent.

The actual decision-making process can be a combination of two or more of these genuine processes. No matter which decision-making process is dominant, it should be remembered that many people are giving more importance to flexibility in their activities.



2.4. Market Segmentation

The overlapping of motivation, risks and decision-making processes may create a wide variety of consumer profiles. It is therefore necessary to create groups in order to have a precise idea of how the market operates. The final step is to look for segments.

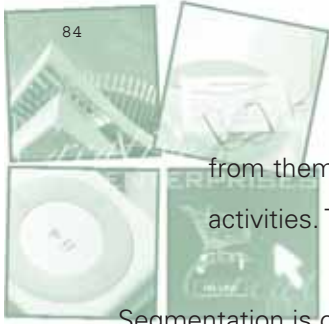
Traditionally, segmentation allows creative enterprises:

- to test theories regarding the market's homogeneity by referring to various categories of consumers;
- to position a product in relation to different segments;
- to formulate homogenous or dissimilar marketing policies;
- to take advantage of all the viewpoints offered by the market.

A segment may then be defined as *a subset of users that can be described and is likely to respond to marketing pressures*. It should be possible to quantify or measure this segment which is stable during the "gainful" period. To describe it, we will have to use geographical, socio-demographic and psychographic criteria.

It is possible to have segments suited to every type of creative good. If we take museums as an example, we find that four segments are usually identified:

- Families with children who consider visits to museums as a cognitive and educational activity as much as a leisure activity. Experience shows that this segment is prepared to pay if the products on offer are of the desired quality and capable of satisfying its needs.
- Elderly persons who have enough free time and money at their disposal. It is therefore in the producer's interest to provide for their comfort and relaxation and organize activities that will enrich their knowledge of the arts, which can be an expensive proposition.
- Socially underprivileged and marginalized groups whose resources are extremely limited. This often encourages live arts managements to use their presence as a lever to obtain larger public subsidies
- Potential associates. They may not initially be very interested in the live arts, but owing to their activities and experience and the lessons they have learnt



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from them, they may decide to take an interest in supporting artistic activities. They will do this through donations, lobbying, etc.

Segmentation is often represented as a means of determining the consumer's profile, which is an in-depth description of the person targeted. Sometimes it is also described as a character study. Though this may be true, the main thing is to focus on an operational and realistic approach to the potential market.

2.5. Audience Development and Feedback

The analysis of the potential market has to be linked to the process of audience development and feedback. Audience development is an important part of the marketing process since creative products have to create their own demand. In a very short-term perspective and given the actual clients, this calls for traditional marketing methods. In a domain where uncertainty is dominant and where tastes and preferences are not always known, it is necessary to invest in information and education for the purpose of audience development. This is why in many countries creative enterprises and employees ask the educational system to disseminate creative practices, thus emphasising the long-term dimension of audience development.

Audience feedback makes it possible to verify the actual nature of the demand, confirm certain choices and modify existing products. Thus creative enterprises should:

- adopt a mechanism such as establishing direct contacts with customers through questionnaires, e-mails, the press and critical reviews;
- keep records on their customers since it is less costly to keep a consumer than to attract a new one;
- encourage consumers to suggest modifications or improvements.

In the case of interactive video games, some producers organize their communication channels with their clients and consumers in such a way that they can benefit not only from their suggestions but also from their inputs. This is very important in an area where uncertainty is structural. As mentioned earlier, this may



change the traditional relationship between suppliers and consumers, creating a sort of partnership. It is very likely that in the future creative enterprises will have to consider their consumers as partners and not just as users.

3. Interfacing with Consumers and Clients

No matter which section of the media is involved, two general and common considerations need to be stressed:

- To be successful, sales proposals should be based on consumer benefits and not on product features. Features are a noticeable part or quality of something, a fact concerning the product or service. One feature can have various benefits, but different benefits can matter in different degrees to different clients. Benefits are elements that the customer values. They play a significant role in motivating the customer to buy the product or service in the first place.
- Once people have bought from a particular creative enterprise, they are more likely to buy again and more next time. It is several times cheaper to sell to an existing customer than to find a new one, so it is important to keep customers updated about new products and services. This is also a good way of keeping a record of where customers come from in order to assess whether the marketing tools are working properly.

3.1. Direct Sales

There are plenty of opportunities for creative people to retail their goods and services directly to the public, such as through live performances, festivals, open-air studios, trade fairs, etc. In such situations some basic rules should be observed:

- When choosing where and how to sell, the creative enterprise must first decide what type of customers it wants to attract: who they are, where they live, why they should want to buy this product or service, how much they would be prepared to spend and when they prefer to buy. For example, Christmas is an optimum time for selling crafts.



- When selling to the public, it is important to be professional and knowledgeable. People tend to buy from people they like, so their attitude and style are very important and need to be appropriate.
- It may be useful to frame a paragraph that can be used as an opening gambit and can then be developed into a fuller conversation when meeting a potential customer for the first time.

“Civilization Trails”*

The Civilization Trail Initiative is a partnership between Lestari Heritage Network, Heritage Trust and Malaysian Interfaith Network. The project is organized around professionally-packaged tours, which are intended to catalyse the flow between creative cultural assets and economic development. Many initiatives have recently been introduced by cultural heritage groups, but their effect in terms of economic development is still limited due to certain weaknesses in management capacity and marketing expertise.

The project aims to strengthen horizontal links between multi-ethnic and multi-religious communities while promoting vertical integration between new and specialised consumer markets. Its activities include:

- identifying new educational and cultural tourism markets;
- developing print materials, tour maps and a website;
- adding value to cultural products through innovative packaging and marketing;
- training tour guides and interpreters;
- promoting traditional artisans and contemporary artists.

- Selling creative skills or services is very different from selling products. Whether the creative enterprise is giving a general overview of its services and business or bidding for a specific job, it is very important to adapt the presentation to the client’s needs; it is not necessary to agree to a specific quotation during the very first meeting. It is probably better to get the client to put his terms and conditions in writing and submit a proposal with the quotation and design brief.

* www.culturalenterprise.org and www.globlethicpenang.net



3.2. Exhibition-cum-Sales and Trade Fairs

Participating in exhibition-cum-sales and trade fairs can be an effective way to reach customers who are interested in purchasing the product or service. It can also provide an opportunity to make new contacts, raise the company's personal profile and undertake market research. That is why in some countries local governments subsidize their producers to encourage their participation in such events.

- Once this need is clarified, it is necessary to identify the specific returns expected from participating in an event, e.g. how much money is to be earned, how many products or services are to be sold, how many new contacts are to be added to the customer database, the press coverage expected, etc.
- When these objectives are established, it is important to decide between various fairs and other events. It is advisable to visit any event that interests the enterprise, to see how successful it is, what type of customers it attracts and whether they fit in with the target market. It may also be advisable to speak to other exhibitors to get feedback on how beneficial they have found it and whether they have encountered any problems regarding organization and promotion. It is useful to contact the event organizers for statistics on how many customers have attended in previous years, the average spending per head and the average value of transactions. This will help ascertain whether customers are willing to pay for your products and services. Finally, it is relevant to find out how the event promoters are planning to market the event, where they will advertise and if they are producing an exhibition catalogue or launching a website where you can be featured.
- When putting together a budget, the cost of the trade stand should be included as well as all additional costs such as:
 - production of stock to sell and purchase of display materials;
 - insurance for damage, loss, theft and also third party insurance;
 - marketing materials, photography and printing of price list, business cards, press packs, invitations and postage, social functions during the exhibition;
 - payment of helpers on the stand, travel and accommodation (if relevant), transport of products and display materials.



- Costs can be reduced by sharing the stand space with enterprises selling similar products or it may even be better to apply to be a part of an art organization's stand. It will thus be possible to assess whether the projected sales and building of new links will cover the cost of taking part in an event. Creating alternative budgets helps to develop contingency plans to deal with any kind of response.
- After this, it will be necessary to create a time-bound plan as many trade shows and exhibition-cum-sales have a selection process, with deadlines for applications a couple of months before the show. Product display and the production of written or audiovisual information – brochures, postcards, press-packs, etc. – are other factors. If the stand is not attractive and interesting, an enterprise can suffer from lack of customers. The price list should be consistent with the marketing materials and business cards should look professional. It is important to include photographs, sketches and code numbers. Sales materials such as invoices should be prepared. These will help the buyers remember the creative enterprise long after the event.
- Finally, for exhibitions and trade shows it is important to have two price lists, one for wholesale buyers and the other for the general public and press.

3.3. Using the Internet

Although purchases of creative products through the Internet are becoming more common, many creative products do not sell very well through this means as people want to examine the items before they buy them. It is therefore necessary to establish a clear distinction between written, audiovisual and other products. The most important distinction is to be made between using the Internet as a medium of information and communication for sale and using it as a medium of delivery.

Many creative people take their first steps towards selling their own products on the Internet via e-mail. Before attempting to sell on-line, a creative enterprise should first adopt a clear policy regarding faulty or undelivered goods, delivery, payment, insurance and credit control. Moreover the creative enterprise must discuss in detail with the Internet service provider how costs and earnings will be shared and ensure that there will be no opportunity for copying the products on sale. This can be difficult since service centres act as gateways and impose their own conditions. Thus, it is absolutely necessary to obtain the cooperation of these service centres.



A Creative Space: Dressmaking Workshops in Senegal

Mame Fagueye Ba is a designer and costumer in Saint Louis, Senegal. She is involved in developing a true visual art where her creative eye enables her to design new products for the fashion industry. At the same time, she also supplies outfits to film studios. Her creations are an expression of her artistic sensitivity seen in her choice of techniques, fabrics and colours. She may not sell large quantities, but her eagerness to launch new product lines and create new designs is very clear.

The financial returns are still inadequate because of a major problem in Africa where the most representative commercial organizations focus on quantity rather than quality, putting genuinely creative activities at a disadvantage. Mame Fagueye Ba has her own website: Espaces Fagueye (www.espacefaguèye.com) which, in collaboration with Association Olivier Arts Africains in France, publicizes her products and organizes sales to all those who share the same ideas (contact@associationolivier.com).

This association would like to be used as a cultural space and meeting-place for artists interested in contributing to new artistic creations, support the sale of creative products, create bonds between like-minded persons and build up networks for selling creative products as distinct from ordinary goods. In exchange, artists must agree not to transgress the underlying principles and work only for financial gain.

African artists face enormous economic, structural and organizational difficulties. What is needed to create appropriate conditions for promoting creative activities in Senegal? It is necessary to instil confidence in producers so that they can pursue their creative talents.

3.4. Mobilizing Collective Management Societies for Protecting Rights

Usually collective management organizations are known for managing copyright and this is quite normal. They negotiate with users or groups of users such as radio stations, broadcasters, restaurants, etc. and authorize them to use copyrighted works. On the basis of documentation and programs submitted by users, these organizations distribute copyright royalties to their members in accordance with



established distribution rules and after taking a fee to cover their administrative costs. In some fields such as the performing arts, discussions can take place at a more personal level.

But these organizations have complementary roles that cannot be ignored.⁴⁷

- they organize socio-cultural promotional activities for supporting new creative skills or for raising money for retirement or pension funds;
- they inform their members about available opportunities in terms of new trends and media openings;
- they sponsor cultural activities to promote their national repertoire of creative works at home and abroad;
- they take steps for the preservation, protection and encouragement of creative activities in the fields of literature, arts, music, etc. This preservation of national and/or community cultures is very important in developing countries where, for instance, traditional folk music is reproduced illegally.

In a field like music, collective rights management companies welcome initiatives and new ideas to promote creativity among their members. They organise competitions and festivals, award prizes and take action to promote music publishing, broadcasting of serials, production of radio and television sets, discs and cassettes, recording facilities, etc.⁴⁵

This role is sometimes criticized by companies representing authors who think that they cannot change public cultural policies. However this attitude is outdated and it is in the interest of such companies to promote creative activities and not just to manage them. In fact, the main problem here is that this creates a situation where companies have to choose between different forms of expression, different groups of creative skills, etc., which is not easy. Also, there is no unanimity among the various organizations about such involvement. CISAC has therefore proposed some guidelines to limit the amount spent on such activities.



3.5. Networking

No matter which branch of the media is concerned, networking can be an effective promotional activity for a creative enterprise and events can be a good way of building relationships with clients, media, new contacts and peers. Networking is about finding out how business is conducted and creating opportunities. It is not about using people, but about creating a two-way information exchange whereby the enterprise can obtain references. In order to exploit this opportunity, the creative enterprise should develop its own database of potential clients as it is a very effective marketing tool.

4. A Specific Situation: Contracting the Customer as a Client

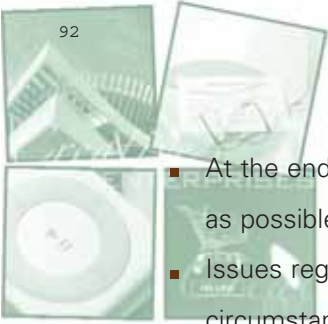
Creative enterprises that provide services, or are commissioned, are often required to submit proposals.

- In some situations, things are relatively clear and easy as in the case of a simple on-the-spot transaction, for example the sale of one book or the sale of one ticket for an event.
- In other situations, things are more complex, for example when a designer has to propose a new object, or when a producer has to propose a new event to a local government or the owner of a venue. We shall focus on this situation.

It needs advance preparation against the background of great uncertainty as it is not known whether the product being offered will match the client's requirements both in functional and economic terms. A discussion between the creative enterprise and its client will not be easy, as a lot of information and step-by-step agreements are required.

Three points must be underlined here:

- To begin with, proposals and quotations must be as clear as possible in order to avoid any misunderstanding in case of a future agreement.

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- At the end of the discussion, terms and conditions must be fixed as precisely as possible in order to avoid future litigation
 - Issues regarding the ownership of intellectual property rights and the circumstances under which they can be transferred must be clearly defined and decided. It is advisable that the creative enterprise retains the copyright, which means that the client will need to mention the author's name in case the work is published.
 - In the case of graphic and web design work the situation is often more complicated, but enterprises and creators have to do their best to ensure that their name is printed on anything designed by them.

Contracting the Customer as a Client: Proposals and Quotations

Proposals are an important tool for the client, but they are first and foremost communication tools used during the process of delivering services to the client. Both parties need to agree on what will be provided, how long it will take and the costs involved. Doing business without detailed quotations and terms and conditions often leads to poor communication, which can be stressful and time-wasting on both sides as well as leading to a loss of customers and revenue.

Before providing a quotation, it is important to produce a draft proposal outlining the aims/objectives of the goods, timings, background and price.

It is then necessary to try and quantify what needs to be delivered and provide detailed descriptions of the goods in order to show how they can meet the customer's expectations. If the producer provides clear design briefs and quotations, the enterprise will be able to manage its client's expectations better, build trust, establish a good relationship with him and thus behave in a professional manner.

After agreeing to the client's brief, the creative enterprise has to supply a financial quotation. This quotation should clearly outline what the enterprise intends to provide to the client, including a detailed description of the work to be undertaken. It is advisable to break this down further into three clear stages:

- The concept stage: encompassing the work involved in finalizing the design brief, creating one to three design concepts and all meetings with the client.



- The development stage: in this stage, the creative enterprise develops the design selected in stage one in detail. The enterprise must quantify what the client will receive and also explain the design process, i.e. the development of the concept selected in stage one, the branding process, printing of letterheads, compliment slips, invoices and a business card template.
- The implementation stage: the production of designs takes place at this stage and products are introduced in the market.

The creative enterprise will need to specify how much time it will spend on each stage and each individual aspect of the project, all the costs relating to it (including overheads, production costs, post and packaging etc.), plus contingency costs and profit margin.

Finally, the creative enterprise must provide clear details regarding:

- Period of validity of the quotation. This is to ensure that prices and time scales mentioned remain relevant.
- Costs and expenses not included in the fee.
- Invoicing: should be done at the end of each stage to ensure that the producer gets paid faster and to avoid some of the pitfalls of discovering that the client is a non-payer or late payer.
- The end of each stage (i.e. with a meeting), so that it can be formally concluded and invoiced. It should also be mentioned that the fees cannot be changed once a new stage has begun.

Contracting: Terms and Conditions

Any proposal should be accompanied by terms and conditions. They should include the following aspects:

- The deadline by which invoices must be paid;
- The mode of payment: cash, cheque or direct bank transfer. In the case of international clients, state the relevant currency and specify who will pay the bank charges;
- Clarification as to whether the terms include VAT;
- Definition of penalties for late payment, either in the form of interest or a percentage of the fee after a grace period;
- Definition of what will happen in the event of cancellation by either party. It should also be clarified under which country's laws possible disputes will be arbitrated.

Sometimes the client has his own draft contract. Enterprises often have standard contracts for all their suppliers and therefore some of the terms and conditions may not be relevant to the project in question. In particular, major brands and department stores have very stringent terms and conditions. Matters may become difficult, but the situation must be handled carefully. Here, more than ever, it may be advisable to seek professional advice when drawing up terms and conditions.

If the producer's offer is accepted, a contract is drafted.

Quotations and design briefs become contracts when the client writes 'agreed' with the date, his full name and signature on them. Each party must have a copy with all these details on it before starting a project. This will help to minimize any problems in the long term.

Finally, the enterprise should always invoice a client before or during delivery, stating the delivery terms. If an enterprise is working on commission, it should ask for a pro-forma invoice or a deposit for the work to be done.



5. Recommendations

In order to implement the above and develop a marketing strategy, the creative enterprise must:

- *Consider products, customers and sales simultaneously. Traditionally, three types of orientation are possible:*
 - *product orientation based on the hypothesis that consumers will favour products offering the highest quality, performance and features;*
 - *customer orientation which systematically studies the customer's needs and wants, perceptions and attitudes and preferences;*
 - *sales orientation in which the enterprise believes that consumers must buy more and more, if necessary by acting on their buying inertia.⁴⁹*
- *Consider various instruments simultaneously. In traditional mixed-approach marketing, four dimensions are considered. They are known as the four Ps: Product, Price, Place and Promotion. The specific combination of these four elements will vary according to the nature of the creative product and the size of the enterprise. For enterprises belonging to the core creative industries, prices and promotion are very important. For enterprises linked with the traditional arts, product and place will play an essential role.*
- *Consider the variety of segments and diversify or version of the number of segments as much as required. This variety of segments must be considered as a permanent part of the life of creative enterprises. This may require a complex and costly system of monitoring or expertise since fashions and lifestyles change constantly.*
- *Evaluate and audit marketing. Very often creative enterprises engage in sales activities that they incorrectly refer to as marketing. Marketing is a complex operation that needs to be carefully planned so that it suits the enterprise's requirements. This is the least that can be done in a field where consumers are guided by very subtle motives and have a very sophisticated approach to the product.*



CHAPTER 6

Financing Creative Enterprises

Any activity should generate enough income to finance its delivery and ongoing development. Some arguments have been developed with reference to creative enterprises to highlight specific financial issues:

- They have to bear substantial negative costs before they get their first receipts;
- They have no means of knowing if their product will be appreciated;
- The initial market may be restricted and may expand only due to positive word of mouth information;
- The demand for a cultural product is very volatile.

These arguments have sometimes led to the view that a creative enterprise can be sustainable only if it benefits from public subsidies or private patronage. This is incorrect and an enterprise asking for public or private subsidies must first prove that it has a sound financial management base. Moreover this claim creates a general accountability problem.⁵⁰

Good financial management includes four main elements:

- A healthy cash flow in order to maintain a positive balance as far as possible.
- A funding strategy to match the enterprise's assets and the opportunities actually available to it. For example a large amount of case study evidence suggests that cultural enterprises use multiple strategies. In an effort to increase their revenues:
 - large non-profit enterprises tend to rely more on star-studded blockbuster productions;



- mid-sized organizations tend to rely more on “warhorse programming,” or traditional works demanded by traditional audiences;
- small commercial non-profit or volunteer enterprises are likely to rely more on niche markets.
 - The capacity to financially evaluate various projects and the enterprise itself.
 - Realistic financial statements including budgets and balance-sheets or statements of expenses.

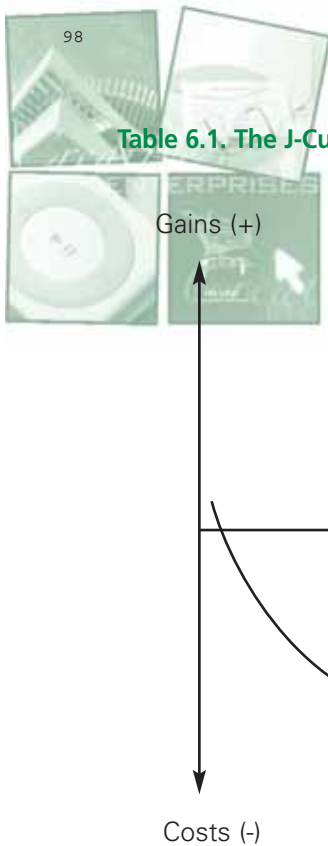
1. The Cash Flow J-Curve

1.1. The Cash Flow Problem

To implement new projects and to produce new goods and services, a creative company will be obliged to support important costs in research, design and development for example.

When compared to other companies, the main difficulty in this case will come from the fact that the creative company does not know, when it carries out such expenditures, whether it will recover the expected receipts. One speaks here about “sunk costs” to illustrate the fact that the creative company is not sure to recover such costs, as it is unable to anticipate what the reception of the public for the proposed new goods or services will be.

At best, the creative company will thus recover the receipts only in a second period of time. To underline the originality of this financial risk, one says that the company faces a J-curve. On the figure, the horizontal axis represents time, and the vertical axis the costs (along the negative values) or the benefits (along the positive values). It is thus seen that, at best, the creative company will be led to support important exits of funds before being able to recover them. In the worst-case scenario, the creative company will have to support costs without any benefits.



To identify this cash flow requirement, it is necessary to identify a robust model for the operational cash flow. The operational cash flow includes revenue, costs, purchase and sale of fixed assets, movement of current assets (such as debtors and creditors) and movement of non-interest bearing current liabilities (such as creditors). All debt, equity, interest and dividends must be excluded since cash flow differs from profit flow.⁵¹

1.2. Possible Solutions

The first solution would be to level out the J-curve by reducing the negative cost, although as long as the negative cost is synonymous with quality, it contributes to the product's success. Hence a better solution would be to change the horizontal position of the J-Curve by inducing cash flow entries as soon as possible. If cash flow entries start with the negative cost, the J-Curve will disappear.

Some possible solutions would be:

- To enter into agreements with banks or micro-credit institutions to obtain immediate support.
- To find sponsors to support the project as soon as it is designed by convincing them that their support is indispensable: if they are involved from

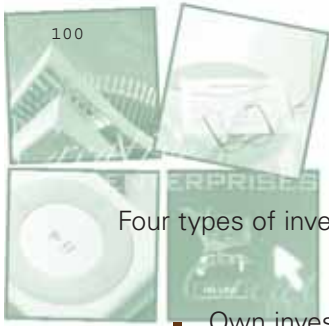


the very beginning when the project is conceived or being designed, they will contribute a great deal to its success. On the other hand, waiting too long for such support is likely to compromise the project and change the expected positive sum game into a negative sum game. Venture capital can provide an answer to the above problem.

- To set up an association of persons interested in the project's success. They can be mobilized to ensure cash flows without the enterprise having to make any financial commitments.
- To sell future products in advance:
 - Subscription is a very important process for creative enterprises that are in a position to supply a series of products or entries since they can benefit from substantial cash flows at the outset without having to wait for the full implementation. They are obliged to offer a financial incentive to attract subscribers, usually in the form of a rebate. The cost of this rebate is however largely offset by the advantage of early cash flows. In the case of start-ups or very young enterprises, this strategy can be adopted only if they have a positive image and if they are trusted by consumers.⁵²
 - The use of existing and widespread sales networks and department stores allows creative enterprises to benefit from cash flows long before they actually start supplying goods or services. This can be done in the case of performances, exhibitions and some creative goods such as books and CDs.⁵³
 - Some countries have a system in place for providing an advance against receipts that helps to alleviate the liquidity problem, but their eligibility conditions are sometimes difficult to satisfy and it may take a long time to benefit from the corresponding liquidity.

2. Mobilizing Finance

To attract and mobilize finance, a creative enterprise is expected to give proof of an adequate outlay, complete the application process and support its application with a plan. It is much more difficult to get others to commit funds if the enterprise does not demonstrate the existence of a potential surplus, explain exactly how the money will be invested and specify what the financial investor will get in return for his contribution to the venture. Therefore, before investing time and energy in planning a venture, it is absolutely necessary to consider how others will value the work and identify those likely to buy a good or service.



Four types of investment are possible:

- Own investment based on the mobilization of private sources, resources from friends and family, partners or shareholders;
- Investment by banks (overdraft, loan, loan guarantee for small firms) and business “angels”; sponsorship and support in kind;
- Public funding from both central and local governments;
- Patronage, grants and awards from patrons, sponsors, charitable trusts and foundations.

Before approaching an investor, it is important for the creative enterprise:

- to ensure that its ideas, products, or business identifiers are protected under intellectual property laws;
- to ask itself why it should invest according to the type of donor;
- to assess the benefits and drawbacks of each funding opportunity and ensure that the offer is suitable for the business.

2.1. Bank Funding

Finance options available from banks include: overdrafts, credit cards (advisable for businesses wanting to borrow small amounts of money), loans, schemes guaranteeing loans to small firms, etc.

It is important to bear in mind that the bank manager makes decisions on a purely financial basis, generally on the basis of two main criteria:

- risk assessment of the project;
- ability to repay the money.

It is therefore advisable:

- To draft a business plan as complete and detailed as possible.
- To ensure that the business plan is in a language that the bank will



understand.

- To avoid technical jargon. This may mean that two versions of the business plan will be required: one for non-traditional donors in simple business language and another for banks or financial institutions.
- To make sure that the business plan includes a market analysis highlighting the social dimension of the cultural consumption.
- To provide details about the management team or identify peers who will be involved in an ongoing evaluation of the business.

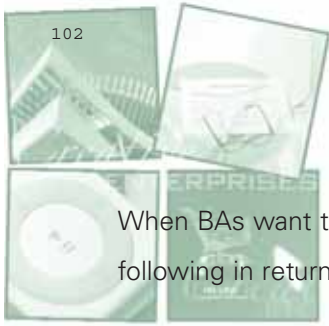
When deciding on the amount of bank financing to be sought, the creative enterprise should consider:

- Where the money for repayments will come from and when it will be made available.
- Whether the entrepreneur will be able to make any personal contribution or offer collateral to match the funding.
- Whether the financial accounts, ratios and indicators are understood in the same way by the parties concerned so that the discussions are open and clear. The financial accounts should instil confidence and demonstrate that the business is viable.
- Whether the enterprise should factor in any security to underwrite a loan.

2.2. Venture Capital and Business Angels

Venture capitalists and business angels (BAs) invest their capital in businesses. They are interested in new and/or small businesses that have either a high potential for financial gain or a high value for the community.

- In the first hypothesis, they expect their capital back after two or three years or at least a review of their profit return.
- In the second hypothesis, they ask for a symbolic return, which reduces constraints both in terms of cash flows and profits.
- In both cases they usually link an advice function to their financial lending which can be very useful.
- Finally, BAs can have a positive advocacy role.



When BAs want to be deeply involved in a business, they normally expect one of the following in return for their investment:

- part ownership of the organization;
- joint ownership of the organization;
- a seat on the board of directors.

All this implies that the enterprise should be registered as a limited liability company.

Another characteristic of BAs is that they usually receive a large number of applications. According to some surveys, only 10 per cent of the applications are considered and 3 per cent receive investment. The originality of the project and its social value are determinant factors.

2.3. Micro-Credit

Some financial institutions, with the help of NPOs, provide micro-credit to people wishing to start a new creative activity. These offers are usually made to creative enterprises directly involved in job creation or social integration.

This micro-credit is disbursed in small amounts limited to €3,000-5,000 and repayment conditions are generally very favourable. In many cases, they are considered as an advance against receipts. Moreover, the recipients of these loans are given the necessary advice and support by volunteers (retired persons, staff of private companies placed at the disposal of non-profit structures, etc.). In some countries, the success rates are high and it is generally considered that micro-credit increases the company's chances of survival.

However micro-credit is often criticized by some people who think that it is not very different from consumer credit and that it provides a livelihood to the person setting up the company during the installation period without guaranteeing the sustainability



of the business.

2.4. Sponsorship

To obtain sponsorship, the enterprise is expected to have an idea of how its project is going to succeed. The creative enterprise should be able to describe how its project will satisfy a potential sponsor's marketing needs, e.g. where and how the latter's profile will improve.

According to an erroneous but widely-accepted idea, the sponsor or patron is totally altruistic and gives money only to help the finance-seeker fulfil his objectives. However, increasingly, sponsors and private patrons have their own views on development and creative enterprises have to make an effort to find common ground between their own and the sponsor's objectives.

Sponsors will expect the enterprise to provide:

- an exact figure of how much it needs as sponsorship;
- the purposes for which it needs it (equipment, travel, marketing, fees, production costs, etc.);
- who else the enterprise is going to approach for funds.

Some sponsors also demand that they should be the only ones in order to avoid competition and benefit fully from returns in terms of image.

2.5. Public Funding – Grants and Awards

Public funding in the form of grants and loans is a popular source of funding for creative start-ups. Four points should be stressed:

- Each funding scheme will have different criteria and usually fund a part rather than the full cost of a project.
- The competition for this type of funding can be quite keen.
- Most fund-givers are risk-averse and therefore want to know whether they are going to get the best value for the public money they give.
- Very often public fund-givers prefer to act as subsidiaries since they would like



to see evidence of other sources of funds that the enterprise and others are investing, (e.g. personal sources, bank loans, grants), to match their investment. The funding may either be in cash or include support 'in kind'.

When applying for these funding schemes, it is necessary to answer the following questions:

- What is the creative enterprise? How long has it been in existence? What is the nature of its financial responsibility? Who is responsible for its decisions?
- What are the donor's aims and requirements?
- What amount of funds does the creative enterprise already have?
- Can the creative enterprise get support elsewhere or by other means?

The answers to these questions should be given succinctly in the organization's written constitution. Some donors insist that the applicants should operate within a particular type of legal structure which provides for an accountable management system as many funding schemes are aimed at organizations rather than individuals. It is for the creative enterprise to decide to what extent its business should be defined by the donor's criteria. It is however better to decide the legal status and objectives according to the enterprise's functions and needs rather than be guided by the choice of a particular type of grant.

Generally speaking, since this funding may be tied to various commitments on the part of the enterprise, the latter must assess the influence these funding obligations are likely to have on its autonomy, options, creativity and administrative costs.

3. Evaluating Financially-Creative Projects and Enterprises

3.1. Financial Evaluation of Creative Projects

Components

The evaluation of a project begins with an exact definition of costs, receipts and cash flows.

- The definition of costs is usually the easiest since many costs can be



predicted with a high degree of certainty from the outset. The main problem concerns recurrent or running costs. Very often these costs are minimized in order to provide the best possible image of a project, although their minimization can affect the project's effectiveness. Another important point is to take into consideration the costs of the intellectual property that will be mobilized.

- The definition of receipts is difficult when there is no reference market for a creative product. Alternative techniques used are contingent valuation and hedonistic values.
- The definition of cash flows must be economically coherent and must focus on the specific project. Cash generated from sales and cash paid for purchases, cash paid for running costs, cash paid and received for the purchase or sale of assets, tax payments and receipts must all be included in this definition. Similarly, equity and loan financing, dividends and interest on finance, interest received on surplus deposits and lease payments must be excluded from this definition.

Evaluation techniques

Creative enterprises usually use three quantitative techniques for assessing investment decisions:

- payback period;
 - discounted cash flow analysis;
 - internal rate of return.
- The *payback period* is the length of time taken by the project to reach the cash flow break-even point where later cash inflows match initial cash outflows. This criterion does not mean much in this case because the relative importance of initial costs creates a strong bias against the creative enterprise.⁵⁵
 - The *discounted cash flow* (or the *present value* criterion) is the net cash flow when all future cash outflows and inflows occur simultaneously or at the same time. The main issue then is to choose a discounting rate to homogenize this evaluation in time. This rate is often the rate of interest, but this criterion discriminates against very long-term projects. It is therefore better to use this method for projects having a comparable gestation period.



- The *internal rate of return* is the discount rate that makes the *discounted cash flow* equal to zero. It can be defined as the highest rate of return that can be imposed on a project so that the ranking of the project does not have to depend on the choice of interest rate.

3.2. Financial Determination of the Value of a Creative Enterprise

Many creative enterprises receive funding for a particular project or a narrow range of activity and some of them disappear or are sold after the implementation of the initial objectives. Thus the evaluation of the enterprise poses a problem.

- A very traditional technique is the *discounted cash flow approach* (DCF)*. The DCF analysis calculates the net cash flow on the assumption that all future cash outflows and inflows will occur simultaneously or at the same time. The result is the net present value. The difference is that when the same method is applied to a project, it takes into consideration all the projects that have been designed and implemented.
- The second technique is the *Price/Earnings Ratio* (P/E)*. It is the ratio of the equity value of an enterprise to its total current or expected future earnings. It may also be calculated by dividing the price of one company share by the earnings per share. However, this technique is very sensitive to accounting differences among companies.
- The third technique focuses more on profitability than on *earnings*. Profitability is then defined as *earnings before interest, tax depreciation and amortization* (EBITDA)*. This criterion has another advantage since it assigns a higher value to enterprises having low earnings but high profitability.
- However, there is one difficulty: Creative enterprises are likely to earn more in the future from intellectual property rights which makes it difficult to assess their value on the basis of their actual earnings without taking into consideration their future earnings.
- The fourth technique is based on *growth rate models*. A simple formula is used to calculate the present value as compared with the mid-point value ten or fifteen years from now. Another variation is the *terminal value*. These techniques seem better since they give the utmost importance to intellectual

* Refer to Glossary.



property rights.

4. Financial Records

The most important financial documents for efficient financial management are usually found in the budget.

- The *budget* will exert a great deal of influence on the company's internal life, particularly from an *ex ante* viewpoint.
- Financial statements (*balance sheet** and *statement of activity**) will have more meaning for all the stakeholders and shareholders involved in the life of the enterprise from an *ex post* assessment perspective.

4.1. Budget

Budget control and management are the major focus of a creative manager's job. The ability to project earnings accurately and to monitor, assess and control expenditure is a determining factor in the life of an enterprise and in its negotiations with financial stakeholders or partners.

It is advisable to remember the following points about creative enterprises:

- To make financial control more effective, the person or department supervising the use of the funds should be held responsible for the budget.
- The budgeting process must begin by identifying the sources of income and expenditure. The latter depend on the enterprise's administrative structure.
- The budgeting process should distinguish between a fixed budget and a flexible budget:
 - Fixed budget allocations are based on estimated costs determined by a fixed resource base.
 - A flexible budget assumes that activity levels will influence resource use. The organization may have a fixed overall budget but it will have a range of projections for earnings and expenses based on the activity level.⁵⁷
 - The budget usually covers the entire fiscal year, but this fiscal year may have little meaning for a creative enterprise that works only for a few months in

* Refer to Glossary.



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the year.

- To make the budget viable, it is necessary to project the cash flow. It is then necessary to anticipate the periods of the fiscal year when the organization's cash position is likely to change.⁵⁸

4.2. Financial Statement: Balance Sheets and Statement of Activity

The budget is mainly used by the staff and the board, even though it influences the relationship with partners and stakeholders. A budget does not however always reveal much about the overall fiscal or financial health of the creative enterprise. Many points are still not clear at this stage: What is the long-term debt and what kind of pressure will it exert?

How much money is there in the enterprise's bank account? There are two standard reporting systems that must be included in the accounting system:

- the balance sheet;
- the statement of activity.

*The Balance Sheet**

The *balance sheet* shows how much money the creative enterprise has and how much it is worth at a given time. Sometimes, the balance sheet may not seem very clear but it reveals over a period of time how well the company is doing. It shows:

- how much the enterprise owns in cash, property and equipment;
- how much is yet to be paid by other enterprises and people;
- whether the company has experienced financial difficulties.

It follows a very simple principle:

$$\text{Assets} = \text{Liabilities} + \text{Net Assets}$$

It is then possible to see how the financial position of the creative enterprise will evolve over time. If its liabilities grow faster than its assets, the company's financial value will go down and will have to be compensated by selling some of its assets.

Its structure is shown in

* Refer to Glossary.



Table 6.2.

Table 6.2. The Balance Sheet

	Total for the current year	Total for the previous year
Assets		
Cash		
Amounts receivable		
Shop equipment less depreciation		
Office equipment less depreciation		
Others		
Liabilities		
Amounts payable		
Accrued payroll and taxes		
Bank notes payable		
Net Asset (Fund balances)		
Total liabilities and net assets		

An important point that must be stressed here is that such assessments tend to discriminate against intangible assets. To ensure that the enterprise’s intangible assets match the creative talents it employs, it would be useful to evaluate the earnings that can be expected from them although computation rules do not always allow this. Even when contracts relating to Intellectual property rights are registered, the solution will vary from one country to another.

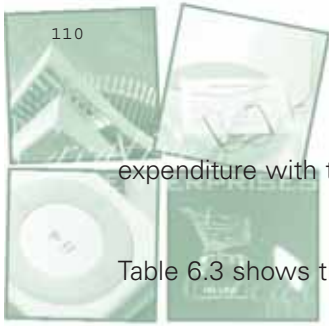
Many treasuries will oppose this type of treatment by pointing out that intangible assets cannot be sold to cover liabilities, which is evident. Overall, this position is bound to discriminate against creative enterprises.

The Statement of Activity

The *Statement of Activity* or the *Profit and Loss Account* shows how net assets can vary on a yearly basis. In other words, it shows:

- how an operating deficit occurs and the corresponding changes in net assets and fund balances;
- how an operating surplus can be used to create assets and fund balances.

This makes it possible to compare expectations with results or actual income and



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expenditure with the original budget.

Table 6.3 shows the principle behind this type of account:

- The income column shows how much money comes from various sources and the changes that have occurred since the previous year.
- The expenses column shows how the money has been spent and changes that have occurred as compared with the previous year.

Table 6.3: The Statement of Activity

	Current year	Previous year
Income		
Receipts		
Other income		
Grants		
Donations		
Expenses		
Staff salaries		
Production		
Marketing		
Development		
Special events		
Concessions		
Contingency		
Changes in net assets		
Net assets at the end of the year		

- The breakdown of income and expenses shows the reader how the enterprise reaches the financial result seen at the end of the year and allows him/her to assess its performance as compared to the previous year.

There are however items that the profit and loss account does not show such as loans taken from or given to other businesses: these loans are not connected with actual trading but they are reflected in the balance sheet.

In these documents, some ratios are computed to assess the enterprise’s financial strength. In the case of creative enterprises, two ratios may be considered:

- The *ratio of expandable assets to total liabilities*: This ratio should be higher



than one to guarantee the sustainability in an uncertain perspective. This is also a guarantee that there will be no cash flow problems.

- The *ratio of expandable net assets to total expenses* for the current year: This ratio should be higher than one to improve the position of the enterprise and alleviate any cash flow problems.

5. Recommendations

- *Creative enterprises must make sure that their financial position is sound. The practice of “financial specificity” due to specific statements about productivity gains or intrinsic uncertainty is misleading as it blurs the importance of sustainability and accountability.*
- *Creative enterprises should understand that any demand for funds must be very clearly presented, which means that financial documents must be as clear as possible in order to create trust when the situation is uncertain.*
- *Creative enterprises must understand that private donors and sponsors have their own strategy which should serve as an incentive to define common objectives.*
- *Creative enterprises must understand that public organizations are increasingly bound by strict conditions and prefer to be involved as a supplementary source of funding rather than as the principal source.*
- *Financial management must be as flexible as possible and avoid incurring long-term or heavy liabilities that the enterprise cannot support in the long run (long-term recruitment of very specific creative skills, renting a venue for a long period without having an exact idea of the audience or funding equipment that will be used only for a short time).*



CHAPTER 7

Managing Creative Skills and Protecting Creative Products

Creative enterprises are essentially enterprises in which creative skills play an important role. Attracting creative skills and managing them efficiently are thus the most important conditions for success. There are however two alternative views about this:

- According to one view, creative skills are the result of a genius that does not need training. Persons endowed with these creative skills take pleasure in their work and do not need incentives such as substantial incomes.
- According to another view, creative skills benefit from training as well as incentives.
- Whatever the truth of the first viewpoint, it would be misleading to claim that creative skills do not face problems like all other specific skills, but there is one important difference, *viz.* the recognition of their intellectual property rights.

1. Hiring and Training Staff

All creative enterprises have to hire suitable and talented people. Although a creative person may set up his/her own enterprise, with the passage of time and as the enterprise grows, it may become necessary to recruit other specialized skills. To attain this objective, it is necessary first to analyze and describe the jobs in question, select suitable persons to fill them, maintain and adapt their skills and competence and be ready to replace them if necessary.



1.1. Selection of Creative People

Since staff resources are usually limited and specific, the manager must carefully study how best to combine the activities of different staff members to extract the maximum productivity from each person.

However, it is possible that the overall budget may interfere with this process since it may define the job in terms of available funds. The following difficulties are likely to arise:

- In some culturally-creative sub-sectors, traditionally low paid jobs are generally associated with the majority of artistic talents and this leads to the practice of hiring or relying on unemployed or poorly-paid artists to fill these positions.
- During the last few decades, job definition has been regulated by several constraints such as the degree of specialization of the tasks concerned, management of careers, etc.

Once the basic requirements are defined, it is necessary to describe the job functions associated with a new post. Four areas are generally covered:

- General description: Who is looking for what type of position? To whom the employee will report and who will supervise the employee?
- Responsibilities and specific duties: What will be the employee's main responsibilities? What is the frequency of various duties he/she is required to perform?
- Employment requirements: These requirements are usually described in terms of education, experience and specialized knowledge.
- Compensation and benefits: Usually a basic remuneration is indicated at the initial stage preceding selection, although additional advantages such as disability insurance, unemployment benefits and retirement benefits must also be defined.

Creative organizations have to hire people for very different positions to fulfil their objectives. Hiring a film director or filling an administrative post such as that of an

assistant require different strategies. Moreover, recruiting staff for salaried positions may be difficult for two reasons:

The Recruitment Procedure

Irrespective of the skills to be recruited, there is a common process comprising five phases:

- Formal application: standardized forms should be used for job applications. This simplifies follow-up procedures since the use of a common format makes it easier to compare the different candidates. The main difficulty is that many creative enterprises are small and prefer to spread information about vacancies by word of mouth. This is probably less costly but it does not cover all the available talent.
- Screening: before starting auditions or interviews, a person or a committee has to short-list the candidates. The committee in charge of preparing the short list may find it useful to take into consideration the opinions of external stakeholders.
- Auditioning or interviewing: this is comparable with a trial and a two-stage process is advisable. However, prospective employees should not leave with the impression that the enterprise is going to discriminate against them as they may file a lawsuit.
- Testing, checking references and hiring: additional on-site interviews may be useful in order to reduce uncertainty. Creative enterprises do not usually have large enough budgets to use detailed screening tests for applicants and tend to avoid a high staff turnover as the costs can be prohibitive and the enterprise may find itself on a hiring treadmill.
- Job orientation: once the hiring process is over, some cultural organizations fix a probationary period during which special activities are planned to acquaint the employee with his/her job. There is however also another dimension, namely the social integration of the employee into the company, which may require the appointment of a tutor. Coaching is very important in this case because it gives training inputs that may be lacking in the initial stages.



- Creative enterprises cannot offer competitive salaries. Sometimes, unions may impose certain constraints and the latter should be clearly defined before starting the recruitment process in order to avoid future misunderstandings and problems.
- Creative enterprises need highly specialised talents for short periods. If the period of activity is relatively short, if the talent is very specific and/or if the talent is not likely to be used again by the enterprises, it is better to offer an 'on the spot' contract than a salaried position.

1.2. Training

Although some established companies have large budgets for ongoing training for their employees, creative enterprises are faced with two handicaps that minimize their efforts in the field of training:

- Their size: because they are small, they do not have sufficient and flexible monetary resources that can be invested in training. Also, they cannot spare someone to train a new employee.
- The volatile nature of their jobs: many jobs in creative enterprises are short-term or part-time jobs, which makes them reluctant to invest in human resources that will leave the enterprise after a short period.

These difficulties explain why training budgets are usually much smaller in creative enterprises than in others. Another explanation proffered for this lack of training is the distinctive nature of creative skills that are inherent and not acquired, although this is a misconception. Further, in the culturally creative sub-sector, many people are entrepreneurs of their own skills so they need to have some basic knowledge of law, finance and accounting.

What are the elements that can open new perspectives?

- In the case of some activities, fairs and exhibitions can provide a certain amount of training. Craftsmen, and even publishers, can gain a lot of new knowledge during these events and progressively incorporate it in their work. Live arts can absorb this knowledge through observation and analysis and it

Volunteers in Creative Industries

Volunteers often constitute a significant percentage of the work force in a creative enterprise. This naturally depends on the size of the enterprise and the sub-sector in question, but managing volunteers is a separate area of activity.

Volunteers are useful because:

- they bring in special skills and experience;
- they strengthen the image of the enterprise as one interested in promoting general welfare since people are prepared to cooperate with it and support its actions;
- they save money for the enterprise and make it sustainable.

However volunteers also cost the enterprise because:

- the time and energy needed to recruit, train and supervise volunteers may be considerable;
- since there is no labour contract, volunteers can leave at any time;
- volunteers have a special relationship with the enterprise that makes managing them more difficult.

Therefore much attention must be paid to their job descriptions, recruitment and training so that they can contribute to the efficacy of the enterprise. Two other issues must also be considered:

- The risk factor. a priori volunteers seem committed since they look upon the enterprise more as an organization than as a business, but due to the lack of contractual commitment, they may rapidly change their minds and leave, thus disrupting the process. The absence of financial remuneration does not eliminate the need for some other form of compensation to minimize this risk.
- The relationship between volunteers and paid employees: the latter may think that volunteers are responsible for their low wages. This means that management must ensure that the function of volunteers is understood and accepted by its employees. A clear definition of the tasks assigned to volunteers and the near-impossibility of interchanging them with those assigned to paid employees is essential to prevent such problems.



can serve as an inspiration, although this usually results in the sharing of common knowledge rather than in personal gain.

- Group sessions can also be organised.
- Some artists' unions organise such sessions, but mainly with the idea of preparing the participants for a job: the knowledge imparted is only intended to make it easier for the participants to find employment.
- Some local governments can do this more efficiently. The creation of specific spaces for starting creative enterprises is aimed not only at solving the problem of premises but also creating an atmosphere for the exchange of information and discussion so that the experience of some people can compensate for the lack in others experience.
- Some collective management organizations arrange training programs as part of their socio-cultural role which is very relevant because it consolidates the link between training and remuneration.
- Compensation can be a solution: in a particular situation, a creative enterprise may find it advantageous to commit itself to providing on-the-job training to an employee. An employee can complete his/her initial training or artistic education by assimilating the required techniques through formal training programs, apprenticeships, job rotation, cross-training and coaching.

2. Remuneration: The Traditional View

Creative skills usually demand special remuneration, but what is normal in this field? No salary surveys have been conducted as in the case for other skills. So what are the factors that can be used to determine remuneration?

- the recognition of creative skills;
- the overall operating budget of the project that requires this skill;
- the perks that can be given in addition to the remuneration;
- risk sharing.

When we look at the experience of creative enterprises, we have to admit that profit sharing is a good way of associating people with creative skills with the project's fate by promising them a fee higher than the one originally decided in case of success



and a lower fee in case of failure. In the beginning, artists insisted on this arrangement as they wanted a share in the profits to which they had contributed,⁵⁹ but producers soon used this profit-sharing arrangement to their own advantage by making the artists bear a part of the negative costs. To do this, the artist's share was based on the net profits and not on the gross profits. Gradually more and more artists started asking for this kind of remuneration, not only in the audiovisual domain but also in the live arts. They wanted to benefit from the income brought in not only by their talent but also by the use of their name in order to reduce uncertainty.

Sharing risks and profits has many dimensions:

- It is a way to postpone the drain on liquidity as profit-sharing compensates for wages.
- It is a way to pressurize creative artists into accepting lower fees by playing on their attachment to their profession. This is a classic ploy and a source of much misunderstanding and frustration.

Three factors should be considered in order to solve this problem:

- defining the degree of risks;
- defining the profit;
- the fiscal assessment of the share of creative skills.

3. Copyright

The original creators of works protected by copyright, and their heirs, have certain basic rights. They hold the exclusive right to use or authorize others to use the work on agreed terms. The creator of a work can prohibit or authorize:

- its reproduction in various forms, such as printed publication or sound recording;
- its public performance, as in a play or musical work;
- recordings of it, for example, in the form of compact discs, cassettes or videotapes;
- its broadcasting, by radio, cable or satellite;
- its translation into other languages, or its adaptation, such as a novel into a screenplay.



Many creative works protected by copyright require mass distribution, communication and financial investment for their dissemination (for example, publications, sound recordings and films); hence, creators often sell the rights to their works to individuals or companies best able to market the works in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as royalties.

These economic rights have a time limit, according to the relevant WIPO treaties, of 50 years after the creator's death. National law may establish longer time-limits. This limit enables both creators and their heirs to benefit financially for a reasonable period of time. Copyright protection also includes moral rights, which involve the right to claim authorship of a work, and the right to oppose changes to it that could harm the creator's reputation.

The creator – or the owner of the copyright in a work – can enforce rights administratively and in the courts, by inspection of premises for evidence of production or possession of illegally made – "pirated" – goods related to protected works. The owner may obtain court orders to stop such activities, as well as seek damages for loss of financial rewards and recognition.

Copyright protection extends only to expressions, and not to ideas, procedures, methods of operation or mathematical concepts as such. This principle has been confirmed by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the World Trade Organization (WTO) as well as the WIPO Copyright Treaty.

A field of rights related to copyright has rapidly developed over the last 50 years. These related rights grew up around copyrighted works, and provide similar, although often more limited and of shorter duration, rights to:

- performing artists (such as actors and musicians) in their performances;
- producers of sound recordings (for example, cassette recordings and compact discs) in their recordings;
- broadcasting organizations in their radio and television programs.



Copyright and its related rights are essential to human creativity, by giving creators incentives in the form of recognition and fair economic rewards. Under this system of rights, creators are assured that their works can be disseminated without fear of unauthorized copying or piracy. This in turn helps increase access to and enhances the enjoyment of culture, knowledge, and entertainment all over the world.

Copyright itself does not depend on official procedures. A created work is considered protected by copyright as soon as it exists. According to the Berne Convention for the Protection of Literary and Artistic Works, literary and artistic works are protected without any formalities in the countries party to that Convention. Thus, WIPO does not offer any kind of copyright registration system.

However, many countries have a national copyright office and some national laws allow for registration of works for the purposes of, for example, identifying and distinguishing titles of works. In certain countries, registration can also serve as prima facie evidence in a court of law with reference to disputes relating to copyright.

Two treaties were concluded in 1996 at the World Intellectual Property Organization (WIPO) in Geneva. One, the WIPO Copyright Treaty (WCT), deals with protection for authors of literary and artistic works, such as writings and computer programs; original databases; musical works; audiovisual works; works of fine art and photographs. The other, the WIPO Performances and Phonograms Treaty (WPPT), protects certain "related rights" (that is, rights related to copyright): in the WPPT, these are rights of performers and producers of phonograms.

The purpose of the two treaties is to update and supplement the major existing WIPO treaties on copyright and related rights, primarily in order to respond to developments in technology and in the marketplace. Since the Berne and Rome Conventions were adopted or lastly revised more than a quarter century ago, new types of works, new markets, and new methods of use and dissemination have evolved. Among other things, both the WCT and the WPPT address the challenges posed by today's digital technologies, in particular the dissemination of protected material over digital networks such as the Internet. For this reason, they have sometimes been referred to as the "Internet treaties."



Both treaties require countries to provide a framework of basic rights, allowing creators to control and/or be compensated for the various ways in which their creations are used and enjoyed by others. Most importantly, the treaties ensure that the owners of those rights will continue to be adequately and effectively protected when their works are disseminated through new technologies and communications systems such as the Internet. The treaties thus clarify that existing rights continue to apply in the digital environment. They also create new online rights. To maintain a fair balance of interests between the owners of rights and the general public, the treaties further clarify that countries have reasonable flexibility in establishing exceptions or limitations to rights in the digital environment. Countries may, in appropriate circumstances, grant exceptions for uses deemed to be in the public interest, such as for non-profit educational and research purposes.

The treaties also require countries to provide not only the rights themselves, but also two types of technological adjuncts to the rights. These are intended to ensure that right holders can effectively use technology to protect their rights and to licence their works online. The first, known as the "anti-circumvention" provision, tackles the problem of "hacking": it requires countries to provide adequate legal protection and effective remedies against the circumvention of technological measures (such as encryption) used by right holders to protect their rights. The second type of technological adjuncts safeguards the reliability and integrity of the online marketplace by requiring countries to prohibit the deliberate alteration or deletion of electronic "rights management information": that is, information which accompanies any protected material, and which identifies the work, its creators, performer, or owner, and the terms and conditions for its use.

The WCT entered into force on March 6, 2002. For the WPPT, the date of entry into force was May 20, 2002. A number of countries have implemented the provisions of the two treaties in their national legislation.

3.2. Why is Copyright Protection so Important?

For many creative individuals the economic benefits derived from copyright protection are essential:

- Copyright protection pays well.
- Copyright enables the rights holder to benefit from any future increase in value of his/her work. Copyright may bring the author money before he/she actually starts work since he/she can ask for an advance payment on future revenues and apply for loans from banking institutions.
- Copyright teaches the author the basics of marketing.
- The usefulness of copyright does not stop with the protection of the products of creative skills. It may also extend to local development. In areas that benefit from the presence of creative skills, copyright adds to the income earned by them and this has two effects: it develops activities centred on creative skills and mobilizes other types of skills; it increases the income generated in the area.

3.3. Negotiation

When negotiating a licensing agreement and the amount of royalties that will be paid, it is important to have a clear view of expected events and remuneration.

Through this contract, the creative artist transfers all or part of his/her rights to the producer for a fixed period in exchange for an agreed remuneration.

- As the potential success of the new creative product is not known at the time of the agreement, the contract is framed in such a way that the risk is to be borne either by the artist or the enterprise, or both. The exact definition of the rights thus depends on who will bear the economic risk, the creative artist or the enterprise (i.e. the author or the editor, the musician or the label, etc).
- Actually, these contracts can be the subject of a dispute even if there is minimal negligence on the part of the enterprise or the creative artist to extract the highest possible economic value from a given creative product.



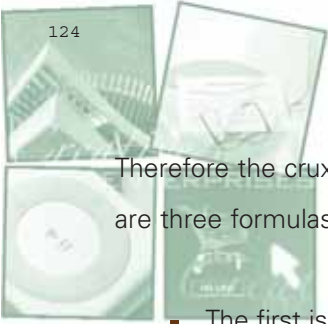
Licensing Reggae Music

Reggae music is one of the flagship creations of Jamaica recognized all over the world and some of its songwriters and musicians are considered as superstars (e.g. Bob Marley), but it is also a source of economic wealth for Jamaicans. Many Jamaican artists live on their music because an effective system has been created for the collective management of copyright; the JACAP (Jamaican Association of Composers, Authors and Publishers). The amounts distributed by the Association are not always very large, but according to its manager they are substantial enough to allow songwriters and musicians to live comfortably and see the results of their activity. The copyright system acts not only as an income provider but also as an incentive. As Paul Barclay, Director of Kajtsman Records says, “Based on my own personal experience and success, I support composers, authors and publishers joining their local society... I was able to collect significant royalties from my released works even if they did not enjoy tremendous air play. This was a great encouragement and incentive to me to continue to create...”

In order to develop this area more efficiently, JACAP has joined the Caribbean Copyright Link which is a union of music societies in the Caribbean consisting of members from Barbados, Santa Lucia, Trinidad and Tobago. Thanks to CCL, these national organizations can create a common data base and negotiate reciprocal agreements in foreign markets that can reduce their transaction costs and increase their remuneration.

Source: Will the real Abijah please stand up? www.jamaicaobserver.com

- The dispute will arise if the enterprise is too active or not active enough in the development of one specific creative product among several, e.g. it is more active if the creative artist is already well-known and less active if he/she is not.⁶⁰ This type of conflict arises frequently in the case of contracts known as ‘*contracts of recovery*’ where the artist intends to recover through his share of the profits what the editor earned when the product was less successful.



Therefore the crux of the negotiation lies in fixing the percentage of royalty. There are three formulas:

- The first is the 'one sale only' formula (or assignment of rights) applicable to a final and outright sale, giving permission to transform an artistic creation into a product, irrespective of the number of creative products to be sold. The enterprise may exploit the creative product as it wishes but it must respect the author's moral rights on the artistic work, namely his right of paternity and integrity of the work (which is to say his/her right to be acknowledged as the author of the work, and his/her right to object to any mutilation or distortion of the work) The creative enterprise will then bear all the risks but it will also benefit from all positive spillovers. The creative artist does not bear any risk nor does he/she benefit from positive results. Under some legislation, global assignments are subject to conditions or are prohibited altogether.
- Under a second formula, the creative artist delegates to the creative enterprise the task of production after paying a service fee fixed in advance for the period concerned. He/she thus bears all the risks since he/she is committed to paying the company a fixed sum for each period, irrespective of the number of creative products sold and the price at which each unit is sold. In fact there is no transfer of rights but only provision of services. This situation creates a moral hazard for the creative artist because he/she does not know whether the company will make the necessary efforts to sell the product as efficiently as possible since it is not interested in the results of the sales.
- According to the aforementioned formula, the creative artist temporarily hires out or transfers the rights of intellectual ownership. As per the terms of the contract, he/she cedes the ownership of the rights of sale and reproduction of the product for a limited period of time and receives a contractual remuneration (advances, rights on work sold, etc). In this case, the enterprise is directly interested in the results of the sales.

To illustrate the last approach, let us consider a contract between the author of a musical composition and its publisher. The first step is the signature of the publishing contract under which the author assigns or transfers to the publisher the right of reproduction and distribution to the public. Such a transfer of rights generally applies to all adaptations and representations, but in some cases there are additional



contracts for specific uses (e.g. production of clips). The author can also assign his rights in future works or give the publisher preferential rights to future creations. The contract may also specify the maximum number of works. On the other hand, the enterprise entering into such an agreement has several obligations, e.g. it must cash the rights, commit itself to exploiting the composition, produce it in a certain number of formats, show diligence, etc. These obligations are not very precise and case law admits that publishers can claim that they faced 'obstacles which they could not overcome under normal circumstances.


Once the percentage of royalties is fixed, several other factors must be taken into account:

- If the creative artist has received an advance payment, he/she may have to make up for it before getting any additional amount as royalty. Normally, advances are irrevocable and the artist is not obliged to pay back this money.
- The royalty will be calculated on the dealer's price. This is normally the price that the creative enterprise receives from the use of a creative skill.
- The royalty rate may be significantly reduced after the deduction of expenses, i.e. if the enterprise has to spend on advertising the creative artist, on marketing or packaging the release.
- There is a difference between the determination of royalties and their payment modalities. The corresponding contract should therefore define when and how often royalty statements are to be made, when the actual payments have to take place and who is responsible if there is a conflict of interpretation or missed opportunity. It is fundamental to understand all the subtleties of the legal agreements one enters into as their implications can be far-reaching.

4. Collective Management Organizations

4.1. Their 'raison d'être'

Collective management is the exercise of copyright and related rights by organizations acting in the interest and on behalf of, the owners of rights. More specifically, collective management organizations monitor uses of protected works on behalf of creators and are in charge of negotiating licences and collecting remuneration.



Thus, copyright owners may consider joining a collective management organization for two fundamental reasons:

- Copyright holders usually lack the necessary negotiating skills. They work in isolation most of the time and know little about the economic potential of their work. Also, they would have to bear heavy transaction costs to monitor all uses of their works.
- The users of cultural products may find it advantageous to deal with a single entity, instead of having to seek permission from every author each time they wish to use a copyrighted work.

Collective organizations for the management of copyright thus reduce transaction costs borne by both creators and users.

- They can be defined as associations to which authors entrust the exercise of their intellectual property rights.
- They issue licences authorizing specific uses, negotiate royalty rates and terms of use with users and collect and distribute royalties.
- Finally, they take action against users who use copyright works without authorization.
- Their size enables them to benefit from economies of scale and they are able to distribute the corresponding profits in the form of higher remuneration to copyright holders or by reducing the price and overheads for their users.

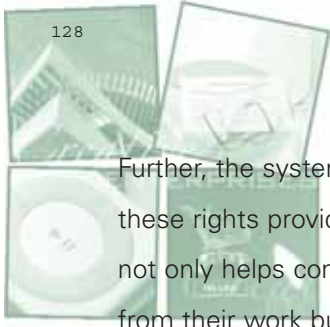
Moreover, experience during the past few years has confirmed that the individual enforcement of rights is impracticable in cases where users need rapid access to a large number of works. Therefore, authors and artists in many fields have set up professional organizations – generally called collective management organizations – to manage their copyright, to facilitate the clearance of these rights and to ensure that they obtain due economic rewards for their creative output. This mechanism allows them to focus on their creative activity only.



4.2. An Increasing Number of Functions

Collective management societies looking after authors' rights play an increasingly important role in the life of many creative persons such as authors, composers, performers, publishers, photographers, record producers, designers, etc. Their role is very significant in certain fields.⁶¹

- Delivery of information and documentation to explain the relationship between the use of works and the expectation of payment to the main actors and intermediaries in the creative product market.
- Counsel and legal advice on: the right of public performance, the right of broadcasting (live and recorded performances on radio and television); the right of mechanical reproduction of musical works (reproduction of works in the form of compact discs, tapes, vinyl records, cassette, mini-discs, or any other form of recording); the right to perform dramatic works (stage-plays); the right of reprographic reproduction of literary and musical works (photocopying); related rights or the rights of performers and producers of records to obtain remuneration for broadcasting or the communication of records to the public.
- Marketing services for identifying markets and accessing them.
- Some collective management organizations offer various types of social protection to their members. The benefits often include insurance or monetary assistance for medical treatment, payment of annuity on retirement or some sort of guaranteed income based on the member's royalty payment history.
- Promotion of socio-cultural services that may support the development of creative products (training, exhibitions, prizes, etc.). Collective management organizations may sponsor cultural activities to promote the national repertoire of works at home and abroad. They promote the holding of theatre festivals, music competitions, productions based on national folklore and music anthologies and other such activities.
- Welfare protection and the promotion of cultural activities are not compulsory. However, whenever they are provided, the corresponding amount may be deducted by the collective management organization from the royalties collected. There is no unanimous view among collective management organizations about such deductions, which according to the International Confederation of Societies of Authors and Composers (CISAC) should not amount to more than 10 per cent of the net income.



Further, the system of copyright and related rights and the collective management of these rights provide a useful service to creators and consumers alike. The system not only helps composers, artists, authors and other rights holders to make a living from their work but it also enables consumers to gain access to a wide range of art, knowledge and culture.

4.3. Types of Collective Management Organizations

There are three main types of societies managing authors' rights.⁶²

- Traditional collective management organizations negotiate the rates and terms of use with users, issue licences authorizing use and collect and distribute royalties on behalf of their members. The individual owner of these rights is not directly involved in any of these processes.
- Right clearance centres grant licences to users stipulating the conditions of use of works and the terms of remuneration fixed by each individual rights holder who is a member of the centre. The individual owner is the principal, and the right clearance centre his agent, which makes the individual owner directly involved in defining the terms of use of his/her works.
- 'One Stop Shops' are a group or a coalition of separate collective management organizations. They constitute a centralised source that users can approach for obtaining the necessary authorization quickly and easily. These organizations are hybrid in nature and their usefulness is borne out by the criss-crossing of multimedia productions that require as many authorizations as the number of works incorporated in them.

5. Copyright Protection: Limitations, Exceptions and Technological Innovations

5.1. Copyright and other Intellectual Property Rights

Copyright law covers the creative or artistic expression of an idea. Patent law covers inventions. Trademark law covers distinctive signs which are used in relation to products or services as indicators of origin or business identifiers. Registered



designs law covers the look or appearance of a manufactured or functional article. Trade secret law covers secret or sensitive knowledge or information.

- Copyright and trademark laws are distinct, but sometimes they are used jointly to cover the same item or subject matter. In the case of the Mickey Mouse cartoon, the image and name of Mickey Mouse is the subject of trademark legislation, while the cartoon itself is the subject of copyright law.⁶³
- A copyright (and a patent) is generally subject to a statutorily-determined term whereas a trademark registration may remain in force indefinitely if the trademark is periodically used and renewal fees continue to be paid to the relevant jurisdiction's trade marks office or registry.
- Trademarks and geographical indications can help build a brand image for creative products and instil consumer confidence by acting as a seal of quality. Trademarks, like other rights, can be licensed and may also be franchised, thus creating a new source of royalties.⁶⁴
- Some European countries also recognize artists' resale rights, which mean that artists are entitled to a portion of the appreciated value of their work each time it is sold. These rights can be considered as a type of copyright applicable in the domain of visual arts.

Many countries recognize the moral rights of the author of a copyrighted work. Two key moral rights are:

- the right not to have the work altered or destroyed without consent;
- the right to be mentioned as the author of the work.

These rights deal with recognition, alteration and correction. Some countries like France give a lot of importance to these moral rights and prohibit the alienation of such rights. In most of Europe it is not possible for authors to assign their moral rights (unlike the copyright which is regarded as a property which can be sold, licensed, loaned, mortgaged or given away like any other property).

5.2. Exceptions and Compensation for Exceptions

Depending on the national legislation, a certain number of exceptions are permitted.

- A copyright covers the expression of an idea, not the idea itself. In some cases, ideas may be capable of intelligible expression in only one way or a limited number of ways. Therefore even expression is not covered by the law under these circumstances. This is known as the merger doctrine.⁶⁵
- The fair use doctrine (or fair dealing in the UK) permits a certain amount of copying and distribution without permission from or payment to the copyright holder. Usually four non-exclusive factors are considered when analyzing the fair use doctrine: the purpose and nature of use, the nature of the copyrighted work; the amount and proportion of the work that was used and the effect of its use on the potential market and on the value of the copyrighted work.
- Copyright law does not restrict the owner of a copyright from reselling legitimately-obtained copies of copyrighted works, provided that these copies were originally produced by or with the permission of the copyright holder. It is therefore legal, for example, to resell a copyrighted book or CD. This is known as the first-sale doctrine and was recognized by the courts to affirm the legality of reselling books in second-hand bookstores.⁶⁶
- A compulsory licence is an exception to copyright pursuant to which another party can use the work in one way or another without having to obtain the copyright holder's permission (hence "compulsory") but will have to pay a licensing fee.⁶⁷
- Copyright is valid for a limited period of time specified by the law and according to the category of work and whether the work is published or unpublished.

Many governments and regional unions are becoming stricter about allowing exceptions. As far as the European Union is concerned, it should be remembered that the last directive issued in 2001 laid down the general rules for the interpretation of these exceptions through what is called the triple exception process. Under the three-step test of the Berne Convention, exceptions are valid only if they are not permanent, if they do not damage economic viability and do not lead to losses for the holder. If the control system is too lax it would undermine the economic basis of copyright, i.e. their incentive function.



Private copying under the fair use doctrine illustrates this debate.

- Due to the high volume of private copying, legislators in many countries have considered it reasonable and fair to provide for indirect remuneration to creators, performers and producers of music in the form of a fee levied on blank media such as cassettes and discs. Recording equipment is also subject to a royalty fee in many countries.
- The revenue collected from blank media and equipment is distributed to copyright owners, usually through collective management organizations. In France a collective management organization called SORECO (Société pour la Rémunération de la Copie Privée sonore) was set up in 1986 to manage this system. It collects the fees levied for private copying including music recorded on blank audio tapes, recordable CDs and DVDs, minidisks, MP3 players and hard discs incorporated in sound systems. This revenue is then distributed to copyright owners.
- The normal share of the royalty on the sale of a book does not usually correspond to its wide dissemination through lending libraries. Therefore, EU legislation provides additional compensation to writers through a public lending right.
- In other countries, legislation outside the sphere of copyright ensures such payments to writers. In the Netherlands, for example, the copyright law prescribes a legal licence for public lending. Thus no advance permission is required, but an equitable remuneration is ensured. Copyright owners have established a society called Stichting Leenrecht to collect lending right fees from public libraries and distribute them to creators, authors, and publishers. Such fees can also cover audio, video and multimedia works borrowed from a library.

Like private copying levies in the music sector, photocopying for private and personal use is remunerated in some countries through a levy on photocopying machines and other equipment used for copying. One type of collective management organization called the Reproduction Rights Organization (RRO) acts as an intermediary and facilitates copyright clearances. RROs function in almost 50 countries today and the number is increasing rapidly.

5.3. The Challenge of the Digital Environment

Henceforth copyright-protected content will be increasingly delivered in digital form via global networks such as the Internet. Therefore collective management needs to be re-worked to face and take advantage of these new challenges and opportunities.

- Collective management organizations should develop systems for on-line delivery of information relating to the licensing of works and content, the monitoring of use and the collection and distribution of remuneration for various categories of work within the digital environment
- Collective management organizations should encourage and support the development of various devices and electronic tools consisting of systems that allow and monitor access to protected material and information. Systems such as passwords, encryption, digital envelopes, serial copy management, watermarking, fingerprinting, etc, are now increasingly used.
- Collective Management Systems (or One-Stop Shops) should form coalitions in order to offer a centralized source of authorization and reduce the corresponding access costs for users.

A New Opportunity for Music Providers: Songs as Ring Tones on Mobile Phones

The Japanese Society for the rights of authors, composers and publishers faces a tremendous challenge: the explosive use of songs as ring tones on mobile phones. Since more and more people use these ring tones constantly and change them frequently and JASRAC has a strict copyright on them, more and more content providers are making musical works available for these ring tones which are distributed via the Internet. In 2003, these copyright represented more than 7 per cent of the total remuneration paid out by JASRAC, but it seems that this proportion has almost doubled during the last three years. In European countries, this use of music is now considered to be the most promising source of income for players in the music sector, but it presupposes a very strict and efficient system for authorizing such uses of music.



- Collective management societies may reach some form of reciprocal understanding aimed at offering users global licences, for example for the use of music on the Internet. In such cases, the agreement covers web-casting, streaming and on-line music on demand.⁶⁶

6. Recommendations

- *The singularity of creative skills does not lie in the fact that they are an exception, but in the fact that some traditional management issues pose new challenges*
- *Copyright is the 'currency' of creative artists as well as many creative enterprises. Negotiating the transfer of the use of copyright is therefore a crucial management decision for a creative artist. The crux of the contract is the choice of a risk-sharing system that can change depending on the nature of the product and market prospects.*
- *Collective management of copyright is a necessity to avoid excessive transaction costs and give creative artists the opportunity to concentrate on creative tasks.*
- *Collective management organizations should be considered not only as income providers but also as resource centres for marketing creative products and accessing new markets.*
- *New digital technologies increase the need for collective management since new opportunities and threats are emerging at the same pace in the digital environment.*

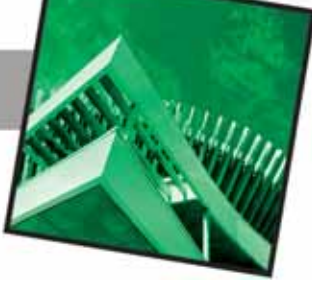


CHAPTER 8

Conclusion

Some of the challenges identified in this booklet will be determining factors for finding a suitable business model for managing creative enterprises at a time when new technologies are emerging:

- Issues related to the efficient management of intellectual property are of great importance today. Producers find it very difficult to commercialize the intellectual property of in-house development and negotiate the myriad IP rights associated with multimedia content. The uncertainty surrounding IP has pushed out the risk-averse and made some IP holders too defensive about their own IP rights. As a result, many companies are unwilling or uncertain about sharing IP rights when they enter into collaborations. Another pending issue is the misunderstanding concerning the potential benefits of IP rights for creative enterprises that may result from inadequate protection and management of their intellectual property assets.
- It is always difficult to develop effective strategies and revenue models for new products. Many traditional revenue and business models borrowed from the traditional industries are not relevant and may even give rise to problems, e.g. in the case of copying which is a great risk. There is a difference in scope stressed by strategies such as versioning and the possibility of indirect appropriation. For example, the traditional models used for free-to-air TV do not appear to be effective in the case of interactive TV.
- For a large number of creative enterprises, the process of defining a common standard for inter-operability is still a relevant question. Rules and processes for managing interactive content have not yet been fully developed, unlike more traditional media such as film-making. The result is both inefficiency and uncertainty for the enterprises concerned.



- Advertisers are concerned about the fragmentation of audience markets and demographics across the multi-platform environment. Therefore many vertically-integrated companies may not allow the adaptation of content on other in-house channels in order to protect advertising revenue flows.
- The power wielded by some distributors makes them relatively indifferent to the products of the local industry. The sheer size of their market power may also mean that they effectively act as gatekeepers for the efficient distribution of content. On the other hand, small producers have difficulty in finding an outlet to display and distribute their creations.



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GLOSSARY

affective process in this decision process, goods or services are not considered from the functional or objective point of view but their importance lies in the sensations or emotions they are capable of arousing

artists workers, creators and performers, who produce art.

assignment contract the sale by an owner of all his rights to a new product and the purchase of the corresponding rights by another person or legal entity.

asset a physical property or intangible right that has economic value; in statistical terms assets are entities that must be owned by some unit or units, and from which economic benefits are derived by their owner(s) by holding or using them over a period of time.

audience feedback makes it possible to verify the actual nature of the demand, confirm certain choices and modify already-existing products.

author the creator of a work, in general, a physical person: the intellectual creator of the work. Some national laws, however, also recognize the authorship of legal entities: such as employers, producers, etc. – who take the initiative and responsibility for the creation of the work. Under Article 2(6) of the Berne Convention, the protection of works “shall operate for the benefit of the author and his successors in title.”

authors' rights rights granted to authors in respect of their works. Authors have two kinds of rights: economic rights and moral rights. The expression “authors' rights” is used frequently as a synonym for copyright. In certain countries applying the common law, however, copyright has a narrower meaning; it only covers economic rights.

balance sheet a statement of a company's financial position as at a given date, listing assets in one column, liabilities plus net worth in the other. Each item is listed at its actual or estimated monetary value. Totals of the two columns must balance because net worth is defined as assets minus liabilities.



basic price the amount receivable by the producer from the purchaser for a unit of a good or service produced as output minus any tax payable and plus any subsidy receivable on that unit as a consequence of its production or sale: this; excludes any transport charges invoiced separately by the producer.

branded product zone enterprises located in this area face customers who lack information and are looking for any information or variable that will reduce the cost of their search

capital goods (capital) durable manufactured goods that are in turn used in production. The major components of capital are equipment, structures and inventory. In accounting and finance, "capital" means the total amount of money subscribed by the shareholder-owners of a corporation, in return for which they receive shares in the company.

clearance centre grants licences to users stipulating the conditions of use of works and the terms of remuneration fixed by each individual rights holder who is a member of the centre.

cognitive process the traditional decision-making process where the consumer acts rationally on the basis of the relevant information at his disposal

commodity zone enterprises located in this area face customers who know at least as much as the seller and do not need any specific information. Consumers will purchase at the lower price.

compensation of employees the total remuneration, in cash or in kind, payable by an enterprise to an employee in return for work done by the latter during the accounting period. It does not include any taxes payable by an employer on the wage and salary bill, which are treated as taxes on production. Compensation of employees has two main components: (a) wages and salaries payable in cash or in kind; (b) the value of the social contributions payable by employers. These may be actual social contributions payable by employers to social security schemes or to privately-funded social insurance schemes to secure social benefits for their employees or imputed social contributions by employers providing unfunded social benefits.

compulsory licence an exception to copyright pursuant to which another party can exercise one or more of the copyright's exclusive rights without having to obtain the copyright holder's permission (hence "compulsory") but will have to pay a licence fee.



consumption demand the value of commodities and services that households as a group are able and willing to purchase in a given period.

consumption expenditure include expenditure on all goods and services produced and sold to their end users during the year.

consumption of fixed capital the reduction in the value of the fixed assets used in production during the accounting period resulting from physical deterioration, normal obsolescence or normal accidental damage.

copyright rights in literary and artistic works. In countries following the common law tradition, it is frequently used both in a narrower sense and in a broader sense. In the narrower sense, it means economic rights (and, since the TRIPS Agreement does not cover moral rights, under it, this term is necessarily applied with a narrower interpretation); and, in a broader sense, it means, in addition the rights in literary and artistic works, but also, for example, the rights of producers of phonograms, the rights of broadcasting organizations and, under certain copyright, the rights in typographical arrangements of published editions.

copyright law norms on the acquisition, protection, exercise and enforcement of copyright and related rights. In a narrower sense it only means the norms on the acquisition, protection, exercise and enforcement of copyright.

copyright-based industries activities or industries where copyright plays an identifiable role.

core copyright industries industries that are wholly engaged in creation, production and manufacture, performance, broadcast, communication and exhibition, or distribution and sales of works and other protected subject matter.

cost a disadvantage associated with an act of choice; an opportunity cost.

creative industries industries that include the cultural industries plus all cultural or artistic production, whether live or produced as an individual unit. The creative industries are those in which the product or service contains a substantial element of artistic or creative endeavour.

cultural goods consumer goods that convey ideas, symbols, etc. of different cultures. They inform or entertain, contribute to building collective identity and influence cultural practices. They are the result of individual or collective creativity and are reproduced and boosted by industrial processes and worldwide distribution.



cultural industries industries which produce products that have a culturally significant content that is reproduced on an industrial scale. It is generally agreed that this term applies to those industries that combine the creation, production and commercialisation of contents, which are intangible and cultural in nature. These contents are typically protected by copyright and can take the form of goods or services.

cultural services activities aimed at satisfying cultural interests or needs. Such activities do not represent material goods in themselves: they typically consist of the overall set of measures and supporting facilities for cultural practices that government, private and semi-public institutions or companies make available to the community. Examples of such services include the promotion of performances and cultural events as well as cultural information and preservation. Cultural services may be offered free or on a commercial basis.

depreciation (of an asset) decline in the value of an asset. Depreciation is the monetary estimate of the extent to which capital has been “used up” or worn out over the period in question.

discounted cash flow the net cash flow when all future cash outflows and inflows occur simultaneously or at the same time (or present value criterion).

discounting the process of converting future income into an equivalent present value. This process takes a future currency amount and reduces it by a discount factor that reflects the appropriate interest rate.

distribution, right of in the broader sense, the making available of the original or copies of a work or an object of related right to the public (i) by sale or other transfer of ownership, or (ii) by rental, lending or other transfer of possession. In a narrower sense, it is the making available of the original or copies of a work or an object of related right to the public by sale or other transfer of ownership.

EBITDA: profitability is defined here as earnings before interest, tax depreciation and amortization). This criterion assigns a higher value to enterprises having low earnings but high profitability.

economic assets entities over which ownership rights are enforced by institutional units, individually or collectively, and from which economic benefits may be derived by their owners by holding or using them over a period of time.

economic rights the exclusive rights of owners of copyright and related rights, to authorize certain acts in respect of their works or objects of related rights (in certain cases – for example, in the case of the rights of performers – to



prevent such acts from being carried out without the consent of the owner of the rights) or at least their right to remuneration for such acts. The term is mainly used in order to differentiate these rights from another, separate sets of rights, namely from moral rights. Therefore, its use is necessary first of all in respect of those owners of copyright and related rights – namely, authors and performers – who normally have moral rights.

elasticity an exact measure of responsiveness of quantity demanded from or supplied to changes in other variables; the percentage change in quantity divided by the percentage change in whatever variable causes the quantity change – all other things being equal.

exclusive right right that is enjoyed by the owner of copyright or related rights, excluding the acquisition and enjoyment of the same right in respect of the same work or object of related rights by anyone else, on the basis of which only the rights owner may perform a certain act and may authorize or prohibit the performance of that act by others. Several exclusive rights may exist in parallel with respect to the same product. For example, in the case of a phonogram, the authors of the musical works performed, the performers of those works and the producer of the phonogram may all enjoy exclusive rights (such as the right of reproduction). This does not deny the exclusivity of these parallel rights since the objects of these rights are not the same.

fair dealing under various copyright laws following the common-law tradition, fair dealing acts as a general basis for applying exceptions to copyright and related rights. It is understood as meaning certain specific acts not conflicting with the normal exploitation of works and objects of related rights and not unreasonably prejudicing the legitimate interests of owners of rights. In at least one country, a similar general exception provides for, and is known as, fair use.

fair use: the copyright laws of at least one country, fair use, in addition to special exceptions, constitutes a general exception to copyright. Fair use is allowed for purposes such as criticism, comment, news reporting, teaching, scholarship or research. It is determined by considering the following factors: (i) the purpose and character of the use, including whether this is of a commercial nature or for non-profit educational purposes; (ii) the nature of the work protected by copyright; (iii) the size and importance of the portion used in relation to the work as a whole; and (iv) the effect of its use upon the potential market for, or value of; the work.



financial accounts system of records of the net acquisition of financial assets and net incurring of liabilities for all institutional sectors by type of financial asset.

fixed assets tangible or intangible assets produced as the output from processes of production that are themselves used repeatedly or continuously in other processes of production for more than one year.

fixed cost the monetary value of fixed inputs used in a period. The fixed cost is the cost that a company would incur even if its output for the period in question were zero. Total fixed cost is made up of such individual contractual cost as interest payments, mortgage payments, and directors' fees.

freelance a creative person seeking to generate a source of income from his/her own creative skills

habitual process comes into play when the consumers' level of involvement is very low and the exercise of will or choice involved in the subordinate process is often absent.

industrial procurement enterprises located in this area serve knowledgeable customers who benefit from good information and who evaluate a product on the basis of functionality

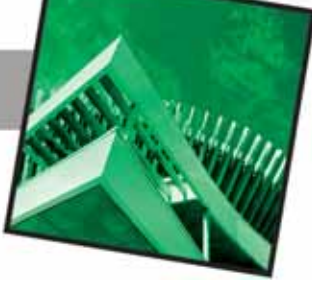
infringement of copyright or related rights an act carried out in respect of a work protected by copyright or an object of related rights without the authorization of the owner of copyright or related rights concerned where such authorization is required by copyright norms.

intangible fixed assets financially produced fixed assets that consist of mineral exploration, computer software, entertainment, literary or artistic originals and other intangible fixed assets intended to be used for more than one year.

intangible non-produced assets assets that entitle their owners to engage in certain specific activities or to produce certain specific goods or services and to exclude other institutional units from doing so except with the permission of the owner.

internal rate of return the discount rate that makes the discounted cash flow equal to zero. It can be defined as the highest rate of return that can be imposed on a project so that the ranking of the project does not have to depend on the level of interest rates.

j-curve the shape of a graph in which the net position of the enterprise is plotted against time immediately after the start of its activities. Initially the net position of the enterprise gets worse since expenditures for covering negative



costs are dominant. Over a longer period the situation can improve due to sales and receipts.

know how contract could be an independent contract or part of a licensing contract that allows another party to use the know-how in either a tangible form (documents) or an intangible form (advice).

liability obligation which requires one unit (the debtor) to make a payment or a series of payments to the other unit (the creditor) in certain circumstances specified in a contract between them.

licensing contract permission given by the owner of an idea to another person or legal entity to produce the corresponding creative product.

marginal cost change in an activity's total benefit which is attributable to a unit change in the level of that activity.

market value price established by supply and demand.

monopoly: a market structure in which a commodity is supplied by a single company, the entry of other sellers in the market is severely restricted or even impossible and where no viable substitutes are available for the item sold.

negative cost the amount of an company's funds that have been spent before the start of sales (or initial costs).

neighbouring rights a synonym for related rights.

net value added the value of output less the values of both intermediate consumption and consumption of fixed capital.

non-dedicated support industries industries in which a portion of the activities is related to facilitating broadcast, communication, distribution or sales of works and other protected subject matter, and whose activities have not been included in the core copyright industries.

one stop shop: a group or coalition of separate collective management organizations. which constitutes a centralized source that users can approach for obtaining the necessary authorisation quickly and easily.

operating surplus/mixed income the surplus or deficit accruing from production before taking account of any interest, rent or similar charges payable on financial or tangible non-manufactured assets borrowed or rented by the enterprise, or any interest, rent or similar receipts receivable on financial or tangible non-manufactured assets owned by the enterprise.

opportunity cost the most fundamental of all concepts of cost: equal to the most highly valued alternative that is forgone as an act of choice.



output consists of those goods or services which are produced within an establishment and which become available for use outside that establishment. The value of output is the value of the total sales or other uses of goods or services produced as outputs plus the value of changes of inventories of goods produced.

owner of copyright the physical person to whom, or the legal entity to which, the copyright in a work belongs. Except for a few special cases under certain copyright laws, the original owner of copyright is the author in whom copyright is vested by operation of law upon his creation of the work. Certain copyright laws grant original ownership of copyright to a person other than the author or to a legal entity (such as the producer of an audiovisual work, the publisher of a collective work or the employer of the author). Owners of copyright may also be the heirs of the authors, or other persons who were the original owners of the copyright, through inheritance, or the legal entities which succeed to the original owners of copyright. The overwhelming majority of copyright laws allow assignment (transfer) of copyright, in whole or in part, as a result of which the assignee (transferee) becomes the owner.

partial copyright industries industries in which part of the activity is related to works and other protected subject matter and may involve creation, production and manufacture, performance, broadcast, communication and exhibition or distribution and sales.

payback period the length of time taken by the project to reach the cash flow break-even point where later cash inflows match initial cash outflows.

permission marketing the situation where customers give the enterprise permission to market their goods because they are looking for strategic information on the quality of unknown products.

price/earnings ratio (P/E ratio) the ratio of the equity value of an enterprise to its total current or expected future earnings: i. It may also be calculated by dividing the price of one company share by the earnings per share.

segmentation in order to reduce the extreme variety of consumer profiles it is necessary to create homogeneous groups of consumers in order to have a precise idea of how the market operates.

statement of activities shows how net assets can vary on a yearly basis (or Profit and Loss Account).



sole trader: a person who is self-employed in such a way that he/she is in complete control and bears all the profit or loss. As opposed to the freelancer, the sole trader works for him/herself and usually has a permanent business set-up.

subordinate process: a process when a decision is made under the guidance of a third person who is supposed to know which good or service should be used.

trust zone: enterprises located in this area face customers who know much less than the supplier and are very uncertain about the quality of future consumption. Trust plays an important role in the purchasing decision process

two-sided market: a situation where the enterprise delivers the product to the consumer on one hand and obtains funds from other economic actors on the other.

value chain logic: from this perspective, the overall economic process is executed in a way that is sequential and linear; The value of the overall process then depends on the specific advantages captured at each stage of the process.

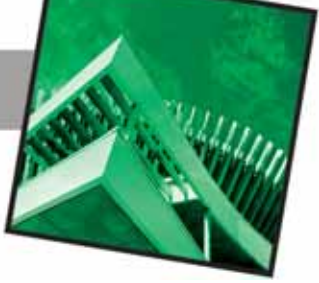
value network logic: from this perspective, the value delivered to consumers depends on the number of accumulated consumers. The value of the overall process will then depend on the relational and organizational resources of the enterprise.

value shop logic: from this perspective the main focus is on solving an unknown or unsolved problem for the client. Since novelty and innovation will be the founding principles the effectiveness of this value logic will mainly rely on the specificity of the human resources.

versioning: a strategy to sell the same product in different forms at different prices. By first targeting consumers who are willing to pay the highest price, producers attain three objectives: obtain large consumer surpluses, mobilize undecided consumers who are shown a number of people who find the goods useful and trigger the social effects of imitation.

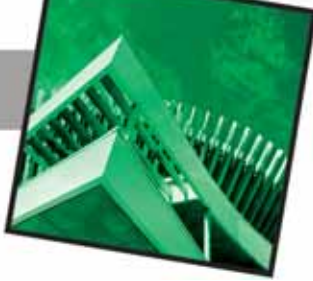
Footnotes

- 1 British Council, www.britishcouncil.org/arts-creative-industries-definition.htm.
- 2 Of course if this number increases significantly and, depending on the conventions' practised in various countries it can be anywhere between five, ten, fifteen or even more specimens, it will be considered as a case of industrial or mass production.
- 3 *Enhancing the Creative Economy: Shaping an International Centre on Creative Industries*, Salvador de Bahia, Brazil, 18 – 20 April 2005.
- 4 *National Studies on Assessing the Economic Contribution of Copyright-Based Industries*, WIPO, Copyright Industries: Report No.1.
- 5 OECD (2005), *The role of culture in local development*, LEED Programme
- 6 London, DCMS, 2006.
- 7 Mediacult (2004), *An analysis of the economic potential of creative industries in Vienna*, Kulturdokumentation, MEDIACULT & WIFO.
- 8 London Development Agency (2005), *Get the Facts*.
- 9 Institut d'Aménagement de la Région Ile de France (IAURIF), *Les industries culturelles en Ile de France*, Paris: 2006.
- 10 UNCTAD, June 2004: *Creative Industries and Development*, Geneva.
- 11 OAS, 2000: *Industrias Culturales, Incidencia Económica y Sociocultural, Intercambios y políticas de integración regional*. MERCOSUR Cultural, Secretaria de Cultura Argentina, Proyecto Regional.
- 12 Economix (2002),
- 13 Report of the United Nations Conference on Trade and Development on its eleventh session, São Paulo, Brazil, 13-18 June 2004 (TD/412).
- 14 ITC/WIPO, 2003: *Marketing Craft and Visual Arts: The Role of Intellectual Property: A Practical Guide*, Geneva.
- 15 We mention initial or negative costs because they cannot be avoided no matter how the product is received by the public.
- 16 The difference between a forgery and a copy lies in the fact that a forgery masquerades as an original whereas a copy does not pretend to be original.
- 17 Greffe X. (2005), *Economie de la propriété artistique*, Paris : Economica, pp. 27-9.
- 18 Idem, p.75-9.
- 19 Hagoort, G. (2003), *Art Management: Entrepreneurial Style*, Eburon Publishers, pp. 83-4.



- 20 UNESCO/Institut d'Etudes Politiques Paris, 2004 : *Les barrières commerciales et non commerciales à l'exportation des produits culturels vers les marchés d'Europe et d'Amérique du Nord : secteurs de la musique et de la danse et du théâtre*, UNESCO, Paris.
- 21 ITC Craft Center, 1998.
- 22 Aid to Artisans, 2002: *Craft Industries as a Tool for Poverty Alleviation: Aid to Artisans' Experiment*.
- 23 Ross, Goran, Stephen Pike & Lina Ferstrom (2005), *Managing Intellectual Capital in Practice*, London: Elsevier.
- 24 Ross, Goran, Stephen Pike & Lina Ferstrom (2005), *Managing Intellectual Capital in Practice*, London: Elsevier.
- 25 Ross, Goran, G, Pike Stephen & Lina Fernstrom, *Managing Intellectual Capital in Practice*, Amsterdam: Elsevier, p. 143.
- 26 Any history of artistic activities reveals that theatre groups, concert societies and museums have been able to stabilise their activities only by adopting a style of management that is similar to the one described above.
- 27 Their presence is stronger at the production end and lesser at the distribution end or in the industrialisation of products. This means that irretrievable costs will be greater in the case of production and almost nil in the case of distribution and industrialised products.
- 28 Greffe X. (1999), *Le rôle du troisième système dans le développement des activités culturelles*, Brussels : European Union Commission, DG V.
- 29 Malara M. C. (1994), *Museum Governance: Missions, Ethics, Policy*, Washington D.C.: Smithsonian Institution Press, p. 6.
- 30 WIPO (2004): *Intellectual Property handbook: Policy, Law and Use*, Geneva, pp. 172-4.
- 31 WIPO (2004): *Intellectual Property handbook: Policy, Law and Use*, Geneva, pp. 179.
- 32 WIPO (2004): *Intellectual Property handbook: Policy, Law and Use*, Geneva, pp. 179-80.
- 33 WIPO (2004): *Intellectual Property handbook: Policy, Law and Use*, Geneva, pp. 191-2.
- 34 WIPO (2004): *Intellectual Property handbook: Policy, Law and Use*, Geneva, pp. 184-6.

- 35 WIPO (2004), *WIPO Intellectual Property Handbook*, Geneva, p. 44.
- 36 An outdated idea: a cultural company obtains a subsidy because it produces something "cultural". This old-fashioned idea does not fit with the current management of central or local government, or private companies. All these institutions face important financial constraints and have their own cultural strategies. Therefore in order to mobilize these funds it is necessary to demonstrate to them that they will benefit from an added value if they finance the company's cultural production.
- 37 Pariza Wacek, Michele (2006), *Permission of marketing - The future of marketing*, www.creativity-portal.com/howto/writing/features/pariza.wacek.
- 38 Godin Seth, www.sethgodin.com.
- 39 Two of the earliest theorists to focus on the communicative qualities of commodities were Thorstein Veblen and Georg Simmel, both of whom were fascinated by the emerging metropolitan lifestyles at the turn of the century, especially the ostentatious displays of wealth pursued by the nouveau riches. In *The Theory of the Leisure Class*, first published in 1899, Veblen explored how, at least for the newly rich, everyday objects lose their functional qualities and become objects of display, establishing the social standing of their owners and users. Imitation is a central feature in the other early theory of consumerism, developed by Georg Simmel. Like Veblen, Simmel approached consumption essentially as a process whereby social status and rank are established and communicated. However, Simmel argued that status competition inspired not only imitation but also differentiation.
- 40 In *Regrets on Parting with my old Dressing Gown*, Diderot described how upon receiving a gift of a magnificent scarlet robe, he discarded his 'ragged, humble, comfortable old wrapper'. He then started getting dissatisfied in turn with every other item in his study for failing to live up to the splendour of the new item. He therefore set about replacing chairs, engravings, bookshelves and everything else. With every new acquisition, however, he found new things to be dissatisfied with, so that eventually he looked back nostalgically at his study the way it used to be, crowded, humble, chaotic but happy.
- 41 The less tradition is important, the more daily life is reconstituted through a new mix between the local, the global local and the global, and the more individuals are forced to negotiate lifestyle choices among a diversity of options.



- 42 The enjoyment of products as objects of fantasies and the fantasies about products are crucial feature of modern consumerism. Consumption is a space where a wide range of emotions should be experienced, through a combination of real and imagined stimuli.
- 43 This problem is not specific to creative goods since one finds it everywhere of (including second hand goods). If it takes on great importance it is because the principle of the creative production is always to bet on the creation, which reduces the role of past experience and thus results in requiring other information.
- 44 Recognising that some people can gain access to creative consumption because they have the necessary opportunities, experience and information that others do not implies that a person's consumption depends on his creative capital. 'Habitus' (the tendency to behave in a particular manner) is the legacy of this capital which each person has within him and which suffices to explain the differentiated usefulness of creative activities. This analysis has two consequences:
- it goes deeper into the economic analysis of behaviour,
 - it treats as relative the effectiveness of public policies aimed at providing free creative activities and the obstacles faced by creative pursuits which are not only monetary but also creative.
- Then, while economists give precedence to income to explain the contents of demand, sociologists like Bourdieu lays stress on differences in education. A person without artistic or technical knowledge will judge things according to their functional value, according to their appearance, because the first function of any work of art is to be beautiful. On the contrary, a person with a truly artistic background will judge the work according to both artistic and aesthetic criteria.
- 45 In the field of creative activities, this process is frequently used, the third person in this case being the arts critic.
- 46 This is particularly true in the case of creative-related services where affective elements occupy an important place.
- 47 WIPO (2004), *Intellectual Property Handbook*, 2nd edition, Geneva, p. 441.
- 48 idem, p. 396.




- 49 For a creative enterprise, the natural trend is to favour the first orientation to the detriment of the other two. The second one must however be taken into account as soon as possible, and at least be considered as a permanent test for validating the results of the first orientation. The third orientation is not very relevant at the start of the process, but it is relevant as far as products suffer from substitution or when the size of the enterprise increases.
- 50 Considering the fact that deficit is fairly intrinsic to cultural activities can free their managers and staff of any responsibility to nurture such deficits, which will then be artificial.
- 51 But when banking investment will be required, debt, equity, interest and dividend will have to be considered again into the analysis.
- 52 Passport constitutes a variation from subscription. The difference is that it may aggregate the supply of various creative enterprises, such as networks of museums or movie theatres, etc. Here, the difficulty deals with the ability of the network to share the corresponding cash flow between its members. When this formula fails it is either because there are issues, either about the determination of the relative shares of the participants or the length of the delays in payment, which would nullify the expected advantage in cash flows.
- 53 Here too the image of the creative enterprise is very important, both from the point of view of the network or the department store, and potential consumers. Here the transfer of the cash can be much faster.
- 54 e.g. the value of resources loaned to the enterprise at no actual cost, the value of hours contributed to the project voluntarily by supporting organizations (In the European Union's subsidies systems, this determination of the in-kind counterpart is very critical).
- 55 This criterion is a very short-term selective criterion and should not be used for creative enterprises since it is very discriminatory against projects are slow to mature.
- 56 Here again we face the price of the time issue: usually we integrate a risk premium. These two problems make comparisons very difficult. In order to solve the first issue, the effect of the choice of a specific rate of actualisation, the criterion is adapted through the internal rate of return, which makes the ranking independent from the rate of actualisation. There is no easy solution for the risk premium due to the very nature of the activity. This risk premium is very important since it may reflect the nature of the company's sector. Since



culture is very risky, this premium should be increased which makes the comparison more difficult for companies with non-cultural sectors. The use of the DCF then becomes unbalanced, other than for very large and diversified companies that own many assets.

- 57 This difference is very important for creative enterprises since they suffer from a important high degree of uncertainty in their activities, which leads one to believe that a flexible budget is a kind of natural law of creative enterprises. However at some moments in the life of the enterprise, budgets have to be fixed. If this effort is not realised as far as possible, accountability will be impossible and this can compromise sustainability.
- 58 For many cultural activities involved in the performing arts, there exist some fallow periods since the dates of the performances are usually concentrated on a few months. Benefiting from such information, it is easy to see how cultural organizations can get into financial difficulties whatever their global equilibrium throughout the year. The financial manager can then take action to prevent such situations. Reserve funds could be deposited into a bank account so that it would not be overdrawn. It may work with patrons or sponsors to prevent this situation. Once a cultural organization begins to find itself in a cycle of borrowing to make up cash flow and very likely paying high short term interest rates, its fiscal foundation will appear weaker and weaker. When the crunch comes, over-estimating revenue, overspending on initial costs and poor cash flow management may lead to bankruptcy.
- 59 When Universal Studios decided to make *Winchester 73* in 1950, they wanted James Stewart in the lead role, no matter what his price. Stewart's agent, Sam Wasserman, grasped the financial advantages of the situation and took as a benchmark the highest fee paid by Hollywood to an actor – US \$ 300,000 per film paid to Clark Gable. But instead of asking for a fixed amount, he asked for a profit-sharing arrangement for his client, which in this particular case amounted to US \$ 600,000.
- 60 Moreover the share of the cultural company can be considered negatively by an artist who would prefer to manage his/her own artistic property rights.
- 61 WIPO (2004), *WIPO Intellectual Property Handbook*, Geneva, 2nd edition, p. 389.
- 62 WIPO (2004), *WIPO Intellectual Property Handbook*, Geneva, 2nd edition, p. 389.

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- 63 Titles and character names from books or movies may be trademarked while the works from which they are drawn may qualify for copyright.
 - 64 An enterprise that uses a trademark or a geographical indication must pay very careful attention to the quality of her/his product; a trademark associated with poor quality can be extremely damaging for a creative enterprise.
 - 65 In the United States this is known as the merger doctrine, because the expression is considered to be inextricably merged with the idea. Merger is often pleaded as an affirmative defense to charges of infringement.
 - 66 It is important to note that the first-sale doctrine permits the transfer of the particular original copy involved. It does not permit making or distributing additional copies.
 - 67 Compulsory licences are often justified as a governmental correction to market failure.
 - 68 WIPO (2004), *WIPO Intellectual Property Handbook*, Geneva, 2nd edition, p. 400.

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