

# How to Make a Living in the Creative Industries



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The logo for BOP Consulting features the letters 'BOP' in a bold, blue, sans-serif font, with a horizontal line above the 'O'. Below 'BOP', the word 'Consulting' is written in a smaller, blue, sans-serif font.

This booklet was written by BOP Consulting on behalf of the World Intellectual Property Organization. BOP is an international consultancy specializing in culture and the creative economy. Established for 20 years, it is a leading authority on mapping and evaluating the socio-economic impact of the cultural and creative industries.

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## 1. Introduction

Making a living in the creative industries means many different things to different people. For some it represents an ideal of creative freedom, for others a business strategy. Individual motivations and roles are as varied as the activities that make up the creative industries – a sector that includes a range of activities from architecture to production of video games.

Whatever creative industry role interests you, and whatever your motivation, intellectual property (IP) is crucial. This booklet explains why. It has been produced by the World Intellectual Property Organization (WIPO), the global forum for IP services, policy, information and cooperation, and it is aimed at people who already work in the cultural and creative industries or who may be contemplating a career in them, as well as policymakers, academics and business support agencies working in the field.

This booklet explains simply and clearly how copyright helps creative people to earn money from their original works. It has been written to be accessible to non-specialists or newcomers to the subject of copyright and intellectual property rights. If you want more detail, this booklet also lists some useful websites and introduces some other WIPO publications that offer more insight into the role of IP within particular subsectors of the creative industries.

## 2. What is copyright and why does it matter?

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce. The creators of those works can protect them and control their use. Copyright, design rights, patents and registered trademarks are all recognized ways for creatives to secure their rights.

Copyright is particularly important for the creative industries. It protects the creative or artistic expression of an idea, not the idea itself. Copyright law allows the owner of the rights in literary or artistic works to control how those works are used. The copyright owner has the exclusive right to use or lend the work or to permit others to reproduce or adapt the work for commercial gain. Copyright protects every original work, regardless of its literary or artistic merit.

The creativity, skill and talent of literary and artistic creators is also their main means of creating wealth and jobs. By compensating and rewarding creators' effort and creativity, copyright acts as an incentive to continue to create new work. By striking the right balance between the interests of creators and the wider public interest, copyright law aims to foster an environment in which creativity and innovation can flourish.

This booklet looks at the different ways in which copyright can help all kinds of creative individuals make a living from their original literary and artistic works.

In addition to copyright there are other intellectual property rights that relate to specific areas of art:

- Design rights protect the unique shape, configuration, color or composition of 2D and 3D designs.
- Patents apply to the technological invention or innovation behind an idea, rather than its inclusion in an original creative work.
- Trademarks reflect brand value and can be registered in relation to particular products or services. They include:
  - business names, logos, product names and other signs;
  - distinctive packaging;
  - graphic symbols, screen displays, graphical user interfaces (GUIs) and web pages; and
  - slogans and sounds.
- Trade secrets are confidential business information which in some countries provides an enterprise with a competitive edge.

Artists, authors, designers, musicians and other creators all rely to a greater or lesser extent on the commercial exploitation of IP. Together, these individuals and companies and their IP rights make up the creative industries.

### 3. Protecting and exploiting your rights

What rights do you own in your work? How can you ensure that you are identified as its creator? What does it mean to “exploit” a literary or artistic work? What does “protection” mean?

Irrespective of which creative sector you work in, there are four main steps to managing your IP:

- Understand what rights you own in your original work.
- Ensure that you have taken all necessary steps to identify yourself as the creator and rights holder.
- Put in place a plan for the exploitation of your IP, including consideration of licensing and assignment of your rights and appointment of agents to represent you and your work where this is likely to produce the best return.
- In the event that someone infringes your intellectual property rights, you need to understand what steps you can take to make them stop and what kind of compensation you can get. Depending on the nature of the breach, and the attitude of the other party, that may be as straightforward as writing a letter to ask them to desist, or agreeing a licensing fee or royalty. In other cases, it may result in more formal action requiring specialist legal advice. You should be aware of the various options available to you, and their cost, before taking your work to market.

## What rights do you own?

Copyright is not a single right. It allows the holder to do a number of things, including:

- prevent others from making copies of the work;
- make and distribute copies of protected works;
- authorize live and recorded performances;
- broadcast the work;
- communicate it to the public, including making work available online and on demand;
- rent or lend physical or digital copies of the work;
- modify a work, or permit others to modify it, to create a new work in another art form (e.g., adapt a novel into a film); and
- authorize the publication of a translation.

This is not an exhaustive list. These and other forms of intellectual property rights that can be transferred to others, by licensing or assignment, for financial gain are known as “economic rights”.

Copyright also includes rights that stay with the creator and are not transferable. These are known as “moral rights”, and generally there are two types:

- The *right of integrity* allows creators to challenge any change to their work that would negatively affect their reputation.
- The *right of paternity* gives creators the right to be named or credited if their work is used or played in public.

In some countries there are other moral rights available to creators.

## Identifying yourself as the rights holder

Under the terms of the Berne Convention, the first international treaty on copyright, creators do not need to formally register works in order to benefit from copyright protection; rather, copyright exists automatically as soon as the work is created and fixed in a tangible form. This rule applies in most of the world’s countries.

However, you should take steps to identify yourself as the copyright owner of any work that you create, for example by including a copyright notice. Many countries also operate systems for registering copyright, and in some countries your ability to enforce your copyright may be limited if you do not register it.

## Exploiting your rights

Intellectual property rights have little value on their own; they gain value by successfully securing economic benefit for the owner in the marketplace. So copyright is a mechanism which helps creators earn a living. *Exploitation* of copyright is the process by which creators achieve the market value of their works. Content creators must be sufficiently compensated for their literary or artistic work, or they will cease to produce it and be forced to find alternative employment.

“Content is king” in many parts of the creative industries; that is to say, original content is the driving force of new value and profit. Creative industries are growing quickly across the world, driven by the ever-expanding possibilities of digital creation, copying, distribution and consumption of cultural content.

## Licensing and assignment

Creative industries include a number of sectors with large, complex, multinational structures. In many cases, it is impractical for an individual to deal with all aspects of such structures while also focusing on their creative work:

- Some rights – performing rights, streaming rights and others – are collected at an industry level and payments are distributed according to a calculation that relates to the volume and value of all transactions, rather than an individual negotiation.
- Access to distribution (for films, for example) will sometimes require that individuals assign their rights to a single individual or entity.

In these situations, the creator's interests are best protected and exploited by licensing or assigning their rights to third parties, whether commercial or collective.

- By licensing their rights, an individual creator maintains ownership of their copyright and related rights, but sells the authority for a third party to use these rights under clear conditions.
- By assigning their rights, an individual creator gives full ownership of their copyright to the third party, typically for a carefully considered value.
- Collective management organizations (CMOs) use collective bargaining power to negotiate and manage rights and collect and distribute payments to creators for the use of their work.

- “One-stop shops” offer users a centralized source through which authorizations, particularly for multimedia rights, can be obtained quickly and easily from a coalition of different CMOs.

Further details of CMOs for individual art forms can be found in WIPO's webpage on Collective Management of Copyright and Related Rights and in the *Collecting Societies Handbook*.

## Protecting your copyright

We have seen how IP is inseparable from ideas of value in the creative industries.

Adequate legal enforcement of copyright laws is necessary to protect those industries and to make international copyright agreements credible and effective. There are some important caveats, however:

- Intellectual property only has value insofar as you can defend it. So matching your rights to the use that you intend to make of the material must be an important part of your business strategy.
- Despite a common reliance on IP as the basis of their earnings, not all creative industries share the same business model. Different rights holders have different views of the best way to protect and exploit IP, in part determined by the branch of the creative industries in which they work.
- The growth of digital creation, copying and distribution of cultural products presents new challenges for copyright enforcement.

A well-thought-through IP strategy can help literary and artistic creators to minimize the risks and costs associated with protecting and exploiting an original work. In the event that IP rights are breached, there are also different ways in which the rights holder can either try to stop their work being used without their permission or ensure payment of unpaid remuneration.

## 4. The creative industries

### Defining the creative industries

The creative industries include a diverse group of activities, all of which rely to a greater or lesser degree on the contribution of original work and its protection through various IP rights. They link important elements of our shared artistic and cultural heritage with a future based around the digital transfer of ever-increasing amounts of information and content. Those connections are illustrated in Figure 1, below.

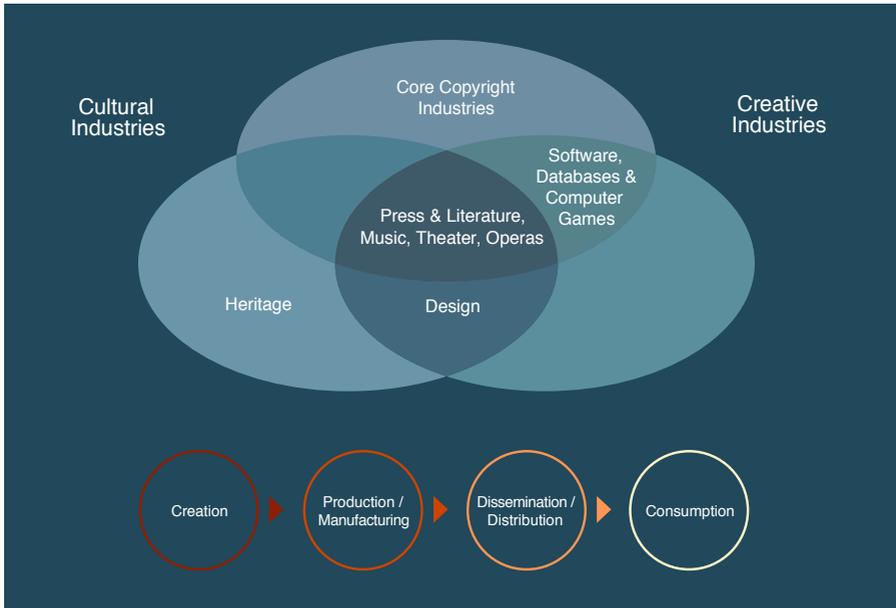


Figure 1: Mapping the creative industries

Note: the core copyright industries here represent WIPO's definition, while the cultural industries are derived from the United Nations Economic, Scientific and Cultural Organization (UNESCO) (2009) and the creative industries from the United Kingdom Department for Culture, Media and Sports (DCMS) (2011).

## Diversity of the creative industries

The make-up of the creative industries differs from place to place, reflecting the different cultural histories and market opportunities that present themselves across the world. Some places with strong higher education systems and access to large markets, such as Finland and Bulgaria, both members of the European Union, demonstrate strengths in more explicitly commercial areas such as software development. Other regions may have different traditions – the strong legacy of 20th-century South American literature is reflected in Peru’s creative industries, in which press and literature form the biggest sub-sector.

These differences are illustrated in Figure 2, below.

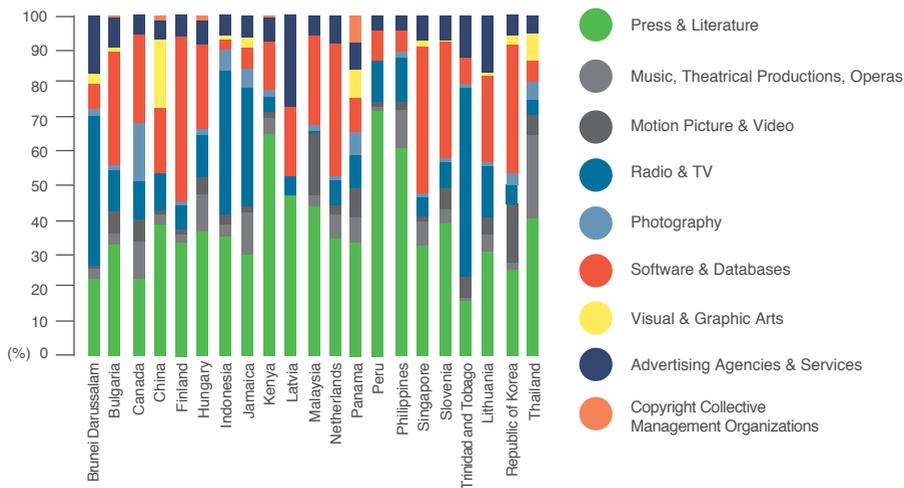


Figure 2: The creative DNA

Source: WIPO Studies on the Economic Contribution of the Copyright Industries 2014.

## What is the global value of the creative industries?

WIPO regularly surveys the value of copyright in the world economy.

Having been barely recognized as an industrial sector at the turn of the century, the creative industries are now acknowledged as a driver of economic growth. Growth in the creative industries is on average three times that of the economy as a whole.

In three-quarters of countries surveyed using WIPO evaluation guidelines, the creative industries made a contribution to GDP of between 4 percent and 6.5 percent. Notably, countries which have recently experienced rapid economic growth typically have an above-average share of GDP attributed to the creative industries.

But the economic contribution of the creative industries is not evenly distributed among different countries, and the size of a country is not an accurate guide to the strength of its creative industries. Figure 3 (right) shows the difference between the relative economic contributions of the creative industries in different countries.

It is not surprising to see that they represent a relatively large share of GDP in the United States of America, a country with very well-developed creative sectors, a large domestic market and control of much international distribution of creative content in the form of films, television, music and games.

Developing nations, even ones with large populations and strong international trade links such as Turkey, may have less developed creative sectors than much smaller countries. Nor is there any consistency within regions; neighboring countries may have very different shares of creative GDP.

But the fact is that the creative industries now make up over 5 percent of the world economy, a share that is growing all the time.

### **Employment in the creative industries**

Employment is the most important social indicator of the importance of the creative industries. The growth of the creative economy, and the protection offered by international structures to protect IP and the interests of the creator, have extended the opportunity to many more

individuals to take part in this socially and economically important sector of the economy.

An important aspect of the creative economy is that it involves individuals and small businesses as well as larger multinational companies.

As Figure 4 (p.12) shows, the contribution of the creative industries to national employment is slightly higher than their contribution to GDP, with three-quarters of the countries showing a contribution to national employment of between 4 percent and 7 percent.

### **Copyright in the digital age**

The Internet and growing digital connectivity have created new forms of creative work as well as a new distribution system for more traditional creative works. There has been fast growth in electronic media and entertainment in recent years, with the rapid development of wireless devices such as smartphones and tablet computers which are now becoming ubiquitous. This provides new opportunities for people in the creative industries to exploit their IP – the sale of digital cultural goods such as e-books, music, videos and games generated USD 66 billion in 2013 – but it also places new demands on the regulation and administration of IP rights.

Figure 3: Contribution of the creative industries to GDP

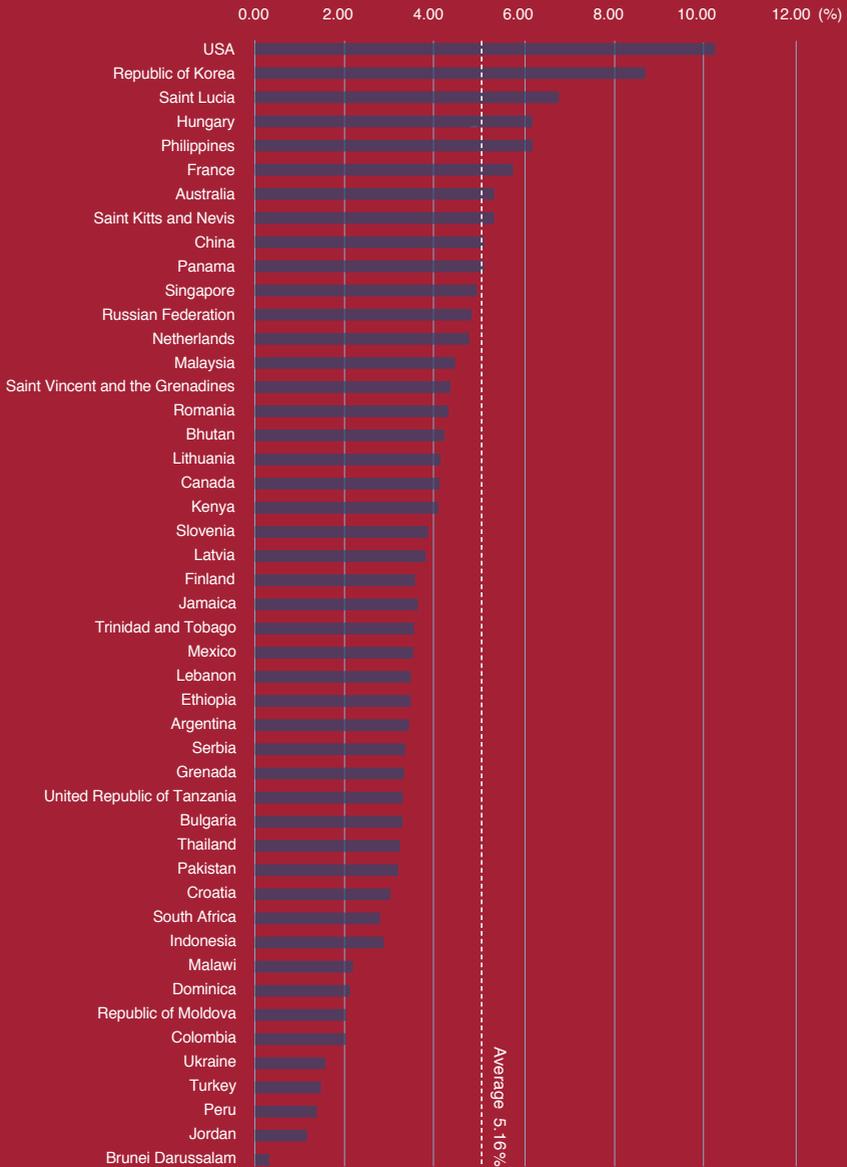
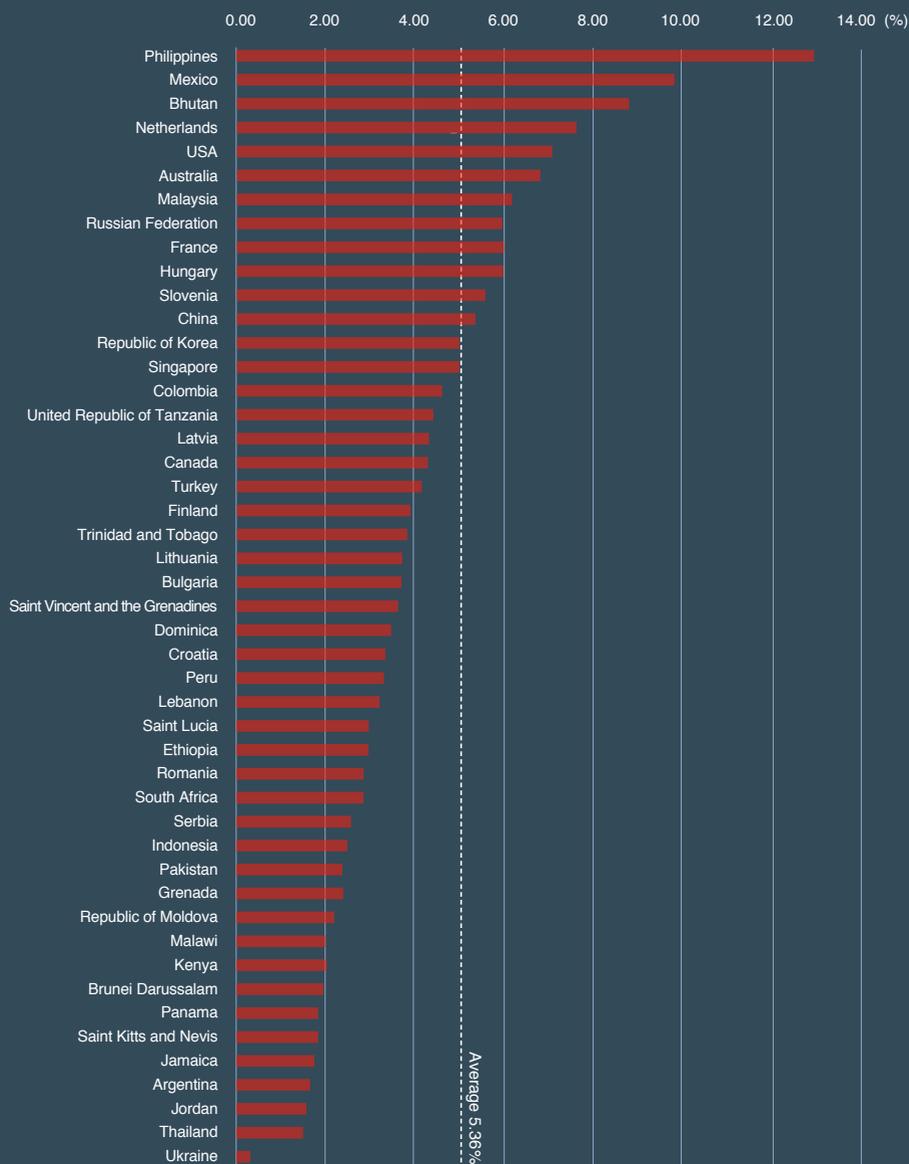


Figure 4: Contribution of the creative industries to employment

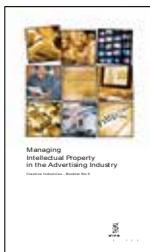


## 5. How do different creative sectors use IP?

WIPO has published a series of tools for some of the largest creative sectors.

These are comprehensive guides to the history, structure, operating principles and rights management arrangements of entire industries, from inception of creative ideas to the ways in which individual consumers interact with those ideas now and for the future. We highlight some of these tools below. All of them are available to download free of charge from WIPO's online publications collection: [www.wipo.int/publications](http://www.wipo.int/publications).

### Advertising



Advertising links creativity with all other commercial sectors and offers a case study in the importance of managing IP effectively.

The variety of innovative digital advertising techniques in the online environment has created

new opportunities for companies to expand advertising beyond its traditional supporting role for goods or services. This places an increasing premium on the role of creativity as a way to differentiate between competing brands, and agencies and clients are looking to increase the leverage and value of their IP assets, from brands and packaging to slogans and trademarks.

Advertising revenue now represents the main or only source of income in many online

business models, and so is responsible for funding a large proportion of original web content. At the same time, the Internet and digital technologies have created new potential problems for rights holders because of the ease and speed with which advertising content can be copied, assembled, reshaped and distributed worldwide.

For more information, see *Managing Intellectual Property in the Advertising Industry*.

### Film and television



Film and television are global businesses; it is likely that every country has a film community whose creative talent connects with people in a distinctive way, linking its cultural heritage with audiences across the world. At the

same time, the film and television industries are undergoing a period of radical restructuring that is increasing opportunities for producers and distributors alike while offering new challenges. New business models and digital technologies are challenging the dominant models of financing and distribution. One thing that does not change is the value of quality and creativity. It is crucial to properly document copyright transactions, give credit to the authors and properly compensate all parties.

In this, the chain of title is key. Most audiovisual works have multiple copyright holders; writer(s), composer(s) and the director may all have copyright in the title,

as well as other licensed use. It is important to establish a comprehensive list of all the rights, licenses and assignments so that the end product can be distributed or exhibited with due regard for each individual rights holder. This is also critical to ensure that rights holders are protected from the threat of injunction by any other individual with a marginal claim on any part of the title.

WIPO's 2011 publication *From Script to Screen: The Importance of Copyright in the Distribution of Films* introduces this complex topic.

## Music



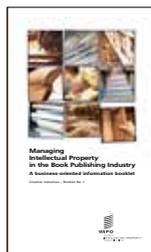
WIPO's *How to Make a Living from Music* offers a comprehensive guide to the commercial music industry. It is a complex interaction of rights in the content (songs), their carrier (recordings), distribution (radio, TV or online) and live performance.

For many years, the recording industry dominated, not only as a distribution channel but also as a rights holder: more often than not, a record label would own the “master” right in artists’ recordings. Success involved being signed by a record label and securing a music publisher to promote the artist’s repertoire. Receipts were collected through a range of well-established collective management organizations for performing and “mechanical” rights (i.e., rights in recorded music).

Music was in many ways the first content industry to undergo the process of digital disruption. From the invention

of the transistor radio through to the Walkman, this was an art form that we were already used to carrying with us. Digitization brought the potential to carry not just a single album, but a whole record collection, in a pocket-sized device. In the digital marketplace, where micro-payments for streaming individual tracks are superseding royalties from sales of physical products, collective management organizations assume an increasingly important role. But the changes in the commercial environment have also reasserted the importance of live performance and a strong repertoire of original material, and globalization means that music is arguably more vibrant and diverse than it has ever been.

## Publishing



Book publishing companies’ greatest economic assets are the intellectual property rights they own and control: the expression of an idea – the content – in a book. In order to sell books free of the risk that unauthorized copies will undermine their market position, publishers need to determine whether or not there is a regulatory framework to assist in the production, dissemination, administration (i.e. collection of royalties) and enforcement of IP rights.

The promotion and protection of book publishers’ IP assets encourage the creation of new literary and artistic works. In a global marketplace, this promotes the supply of diversified cultural products.

This is of great significance to a country's cultural traditions and market. Copyright underpins the role of publishers as cultural agents and transmitters of ideas, secures their investment in new talent and allows them to reward successful writers.

More detail on this topic can be found in *Managing Intellectual Property in the Book Publishing Industry*.

## Video games



In just a few decades, the video game industry has grown to rival the size of the motion picture industry – which has been around since the 1880s – and to surpass the even older music industry in terms of overall revenue.

Even in this short time, the business model for the sector, and therefore models of exploiting IP, have evolved constantly and dramatically.

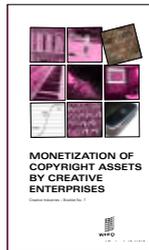
Video games is not the first creative industry to emerge from a marriage of creativity and technology – but it is the one in which technology is most embedded within the experience of the art. This is maybe why it refers to its new products as “IP”. And businesses in the sector are acutely aware of the importance of establishing IP protection.

The expense and complexity of video game production, particularly in the console market, is reflected in a lot of “work for hire” for artists and technologists; in other words, creative individuals often work under contract to an employer. The need to

protect trade secrets is often reflected in clauses in the contract of employment that also assign to the employer the copyright in original literary and artistic work carried out under that agreement.

WIPO's publication *Mastering The Game: Business and Legal Issues for Video Game Developers* is a comprehensive guide to issues of IP, finance and distribution in this sector.

## Monetization of copyright assets by creative enterprises



Every individual creator and every manager of a creative business faces the challenge of putting the right value on their original IP. The increasing penetration of digital technologies and the Internet also means that they have to make decisions

about streaming and licensing their content in a way that will “future proof” its value. WIPO's *Monetization of Copyright Assets by Creative Enterprises* offers insights and practical advice on how to get the most from your original content. It introduces the concept of an “IP Audit” looking at the value of copyright over time.

It demonstrates a number of different approaches to valuing copyright assets, and gives examples of a range of tools and agreements. Bringing “external” factors such as the value of a brand and the enforceability of any rights into the estimation of what creative content is worth, this is an essential reference document for individual creators and managers alike.

## Managing creative enterprises



Running a creative business is about more than just managing IP assets. Creative individuals and enterprises need to make good choices about financing, pricing and marketing their work.

Managers in the sector need to understand how to

incentivize and get the best out of teams of creative individuals with distinctive skills and strong views about their own value.

The creative sector is mostly made up of very large numbers of individuals and micro-businesses (employing no more than 10 people). Such small enterprises may not have the capacity to deal effectively with the accelerating pace of change in their business and legal environment; they may lack the resources to buy in specialist advice.

One resource that creators and managers can turn to for guidance is WIPO's publication *Managing Creative Enterprises*. This is a practical guide to the wide and complex subject of business management. It looks at how creative products, markets and networks combine to create value for individual creators and owners of creative businesses. It gives advice on how to nurture and enhance the skills of individuals, and how to bring them together in teams. Importantly, it describes the different kinds of finance available, and explains how to establish which is most appropriate for your creative enterprise. It concludes with a look into the future, and considers the limitations, exceptions and technological innovations that affect the value of creative IP.

## 6. Final remarks

The creative economy, of which copyright and creative industries are a part, describes an entire system of relationships in the post-industrial, knowledge-based economy where creativity is an essential feature and driving factor for competitiveness and economic growth. It represents a new, global awareness of the role of creativity and innovation. This model is entirely underpinned by intellectual property rights and their contribution to economic, social and cultural development.

This dynamic environment is full of risks as well as opportunities. There are significant structural differences between creative industries and other, more traditional sectors of the economy. The future of the creative sector is also interwoven with an exponential increase in the amount of digital content and data produced on a daily basis all around the world. Legal authorities, creators and managers alike need to determine how IP structures and agreements can accommodate the use of new technologies and “trust based” forms of exchange, such as Blockchain, to reinforce trust in individual copyright in a way that will complement and underpin existing legislation.

These challenges highlight the critical role of IP in providing a stable and predictable environment in which a better understanding of the value of copyright can further accelerate the growth of economies and employment by:

- standardizing measures and aligning IP legislation;

- increasing wealth creation through recognition and protection of the rights of the individual author or creator;
- recognizing the value of trade in IP in electronic and physical goods as well as services; and
- boosting investment in capital and revenue support for the creative industries.

IP has always had to balance the interests of the creator with society's need for continuing innovation. Copyright and access to information are central to the operation of a creative economy that is one of the mainsprings of economic growth and opportunity for the 21st century.

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