

Chapter 11 – Silent Design and the Value of Creative Ideas

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Introduction

In Chapter 3, the value of the design industry was noted as being especially valuable in an economic context in the UK. Generating £85.2bn in wealth in 2016, growing around 5 per cent per year, and accounting for 99.6 per cent of all new jobs (The Design Council, 2018), design has become synonymous with value creation in the cultural and creative economy. Benton et al (2018) make the point that the influence of 'design' goes well beyond the creative industries into e.g. the aerospace and automotive industries, banking, and other professional services, implying that design is integral to the future economy (see Design Council, 2017), as well as being integral to value creation more broadly across the economy, in which is now accounts for 7 per cent of all wealth (GVA). To some extent, this is reflected in the per capita wealth of designers – an average of £50,328 in 2017 – which exceeds other areas of accountancy and finance, which typically come to dominate sector analyses in the UK (see Design Council, 2018, p6). In this chapter, we reflect on why design is so valuable to the creative economy and indeed most economic sectors, as well as problematising the dilemmas that are presented by the design industry where idiosyncratic behaviour of design processes and design working jar with mainstream schema for valorising creativity or design in the work place. In this chapter and drawing on the case study of (furniture) design, the tensions between the notion of 'hidden design' and that of the more commercially orientated 'intellectual property' are exposed and discussed.

The chapter begins by exploring the historical evolution of the design industry in the UK before examining the economic imperatives of design processes. The case study of furniture design is drawn upon to underscore the tacit, subtle, and often multiplex characteristics of design functions and design working, which are framed as pivotal to the success of design in the UK, but in more commercial respects sit uncomfortably within a mainstream value framework presented through price, and intellectual property. As we conclude, the dominance of design-led value creation in a contemporary context calls for more suitable proxies of value creation, and more nuanced apparatus and research techniques.

Key Words: Hidden Design, Value, Intellectual Property

The UK Design Industry

The UK has a long history of design, which stretches back over centuries, but its value has come to be formally acknowledged nationally in the first Council for Industrial Design, established by Churchill in 1944. The Council became an important source of public pride in the UK's cultural designs and in the post-war period, an important stimulant for national investment. By the 1970s and early 1980s, there was a renewed economic interest in British design as a key factor driving innovation in businesses, and by extension in building commercial competitiveness at a time of national manufacturing decline (see Corfield, 1979); drawing remarkable similarities with the celebration of design by both Churchill in 1944, and later Tony Blair. Amongst other things, Corfield's report emphasised the importance of design to adding value to products, which he defined in terms of technical performance, styling, reliability, durability, safety, and ease of use/maintenance (see Walsh et al, 1992). Corfield framed these added value elements of design as 'quality issues'; arguing that companies who concentrated on quality (cf. quantity/mass production) would meet customer requirements more successfully and thus be more competitive in the long run. Corfield's statements draw similarities with the Finniston Report (UK, 1980; see also Williams, 2007) which although concerned primarily with the state of the British engineering profession (in transition) also highlighted the positive economic impacts of design-led innovation leading to a seminar held by Margaret Thatcher, the then prime minister at Downing Street in 1982. Under the banner of 'Product Design and Market Success', a wide range of successful British designers, captains of industry, educationalists and government ministers considered and promoted British design, with Thatcher (1982a; 1982b) arguing 'British competitiveness would never extend globally if it forgot the importance of good design':

"By 'design' I do not just mean 'appearance'. I mean all the engineering and industrial design which goes into a product from the idea stage to the production stage, and which is so important in ensuring that it works, that it is reliable, that it is good value, and that it looks good. In short, it is good design which makes people buy products and which gives products a good name. It is essential to the future of our industry".

(Thatcher, 1982b).

Thatcher's use of design as a key industrial tool draws resonates with the New Labour Government of 1997-2010, under Tony Blair, and its use of creative industries ("Cool Britannia") as a strident policy area, in which 'design' and the 'creative economy' co-evolved. Whilst Churchill and Thatcher had both framed design as a key policy vector for growing the economy in the national interest (a feature also present during 1997-2003), the new Labour Government for the first time drew wider public interest in the value creation associated with other nebulous and hidden aspects of arts and culture, arguing that these should be part of the mainstream and emerging new economy (see

DCMS, 2001). In practice, the new Labour approach was an intensification of Thatcher's policies developed throughout the 1980s but the explicit promotion of 'design thinking' as a valuable and new aspect of the economy from 1997 onwards reflects a new attitudinal approach to its role and a move away from engineering value into objects towards value potential in a wider range of activities, especially services.

In collaboration with the Design Council (formerly Council of Industrial Design, and The Design Centre from 1956), the New Labour Government launched an initiative in the form of a competition, to find the best of British design, which would come to furnish the so-called Millennium Dome in London from 2000. Of the 4000 or so products and services entered into the competition, 1012 were ultimately awarded the coveted 'Millennium Product Status' and promoted as exemplary British designs. As Blair stated:

"These are world-beating designs that will help improve the quality of our lives and give economy the edge over our competitors"

(Blair, 1998).

Utterback et al (2006) note in their research that only 19 per cent of the companies awarded the Millennium Product Status had an in-house designer, a design team, or engaged a consultant designer. In other words, 81 per cent of the products and services promoted as the best of British design were in fact not designed by designers. This is all the more remarkable given the shift in thinking at this time towards 'Design Management' and the primacy of design within business – involving communication between the different departments in an organisation (e.g. production, finance, marketing, sales) to synthesise design information from the inception of a product through to its eventual completion (see Jerrard and Hands, 2008).

Although often seen as suffering somewhat from a perceived lack of clarity in definition (oxymoronically, design is often seen as an unstructured and risky practice, whereas management is based on control and predictability) the philosophies of design management from the 1980s onwards were nonetheless championed by the Design Management Unit of the London Business School through a series of influential lectures and seminars by Peter Gorb. Gorb was a firm believer in the strategic importance of design (management) and saw the structured control of design in organisations as a vital and frequently underutilised resource that adds value to a business (see Jerrard and Hands, 2008). For example, Peter Gorb and Angela Dumas investigated the 'organisational place of design' from 1987 onwards, in which their main objective was to reach beyond anecdotal evidence surrounding best practice in design, and discover what constituted design as "general practice". Their research was seminal in discovering: "all aspects of the business

where design is utilised” and identified how the “enterprise organises itself to make best use of design” (Gorb and Dumas, 1987, p151); in doing beginning to understand how the activities of design flow between, and receive input from, the various people and departments in a firm.

Working within their own narrow working definition of design as, “a course of action for the development of an artefact or a system of artefacts; including the series of organisational activity required to achieve that development” (ibid, p151) (a definition developed to reflect their assumption that product development pervades industrial organisations and spans numerous activities usually planned and organised in different functional departments), Gorb and Dumas were concerned with the development of a series of design matrices in case study companies, which highlighted the role of covert activities, which influenced design outcomes in the businesses they investigated. These covert activities or “silent design” as they termed them, are seen as actions within a firm that are not called design and are carried out by individuals who are not considered designers. Gorb and Dumas noted silent design as company staff (often middle managers in larger firms) undertaking certain activities unaware of their importance to overall design and product development. Interestingly Gorb and Dumas surmised that these individuals often made decisions viewed as more appropriate and important to the design process than those of the actual designers. The relatively uncomplicated realisation by Gorb and Dumas that much design in companies was undertaken by ‘non-designers’ has been further explored over the years, and provides a context in the following section, which explores some key developments in the understanding of who does design in firms.

Silent Design in Business

Early recognition of something analogous to silent design was noted by Walsh (1996) who recounts research undertaken in the early 1980s (see Walsh and Roy, 1983). When interviewing manufacturers about design activities, some firms made quite positive statements about their lack of design efforts. “*We don’t do design*” was one response recorded, qualified with an explanation that sketches of potential products were often informally prepared (“*on the back of a cigarette packet*”) and then developed by a range of shop-floor workers who would essentially decide the shape, size, form, material and manufacturing process of the product (ibid). A non-linear, collective effort, not wholly silent, but certainly not recognised as design activity. By the late 1990s, Walsh began to align his thoughts on silent design around the definitions of Gorb and Dumas and included a few ideas that expanded its characterisations. Firstly, he saw silent design as design centred activities that were often undertaken by staff developing and contributing to product ideas in their own time (something defined latterly as ‘Bootlegging’). Furthermore, Walsh felt silent

designers were frequently staff that were highly qualified and committed to design, but their time to work on design ideas was constrained by their managerial duties.

By 2003, Bruce Tether (Tether, 2003) observed that silent design was “widespread” in companies, even for companies that have been awarded prizes for their exemplary, well designed products. Tether’s research revealed that nearly a quarter of the award winning companies investigated stated they had no in-house design staff or design team, nor engaged consultant designers when developing new products. As he noted, these companies lacked professional design input, yet still managed to produce praiseworthy products. Tether went on to define two more possible areas of design in the business, which he saw as influencing product development:

1. *Subordinate Design*, which conveys an explicit design influence, recognised by designers, but existing as a subsidiary function e.g. within Research and Development or Marketing.
2. *Designed Focused activities* in a business, which designers separate from other functions but nevertheless have equal status to other departments.

Tether’s ‘locations/types of design’ within a firm reveal that design ideas can originate from many sources; the initial product ‘vision’ is influenced by many people in a company along its developmental journey, silent designers amongst them. However, only some of these people will be rewarded, or even, credited for their input; a point we discuss later in the chapter.

Whilst Tether’s research was aimed specifically at large production companies, the work of Moultrie et al (2007) was concerned with smaller companies. They noted that whilst there was strong evidence of the importance of good design to companies, it was apparent that design skills were often marginalised in small and medium-sized companies (p335), and evidence of completion of design activities by staff ‘with no training or aptitude in design’ (p357). This marginalisation, which frequently leads to silent designing, is often a symptom of a “design illiteracy” or immaturity, within smaller companies which is often characterised by an over emphasis on engineering, internally sourced marketing information and unfounded prejudices towards design, combined with tradition-based beliefs of some managers about how to make things (ibid).

Although there is persuasive evidence to suggest that when developing existing and new products, an ‘integrated’ design approach (design as a resource that links, directs and supports disparate specialisms in the organisation such as Marketing, Graphics and Production) is desirable for competitive advantage, Stevens et al (2009) argue that in practice, the “dis-integration” of design

activities within SMEs contribute to 'the myriad factors, which impede or diminish the effective strategic exploitation of design'. To highlight the dis-integration of design in firms Stevens et al proposed two themes which align with the concept of marginalisation of design whilst supporting the notion of silent design:

1. *Partial Design*, employed to a limited degree for such things as superficial styling or communicating through marketing and branding; and
2. *Disparate Design*, a non-holistic approach to design within the firm where design is widespread but not co-ordinated in any effective way to realise synergistic potential.

The marginalisation of design along with the dis-integration of design activities in firms (partial and disparate design included) has been seen by some theorists as evidence that design in organisations is nearly always undervalued, frequently neglected and regularly seen as unimportant. For example, the abstruse and capricious nature of design has remained despite transformation in information and communication technologies and the advent of web-based innovation and product development (see Candi, 2009). Open source systems, social media interactions, electronic design templates and crowdsourcing activities have meant that in certain fields of design the responsibility, management and ultimate ownership of ideas and designs has become increasingly vague. It could be argued then, that silent design has become even more silent. The corollary of these new ways of designing is the possible inaccurate and unwitting, 'normalisation' of design through design tools that include speculative templates and defaults, which in time become accepted design practice (Candi, 2009). In other words, a fifth-hand form of designing that is markedly removed from the professional designer and consequently the ownership of ideas become more tenuous.

Contemporary research has begun to push the notion of silent design far beyond the design 'space' considered by Gorb and Dumas (op cit.) with for example, Brøgger and Jevnaker (2014) expanding the idea of what constitutes design in two further ways: (i) how design is done and (ii) where it can take place. Brøgger and Jevnaker use the term 'waremaking' to frame the expanse of influences that ultimately lead to the realisation of a 'ware' or product. The authors see waremaking as not only machine-made things, but critically, items that incorporate physical interaction; something akin to Craft, where designing and making blur. This leads to things that are richly 'personalised' and thus, in some way, bare the mark of the maker, not only physically but tacitly (or silently). Moreover, Brøgger and Jevnaker see the design space as being well beyond the design studio or design department. Not unlike Heap (2008) who witnesses casual, but highly important, design centered ideas and information being circulated around businesses through the 'corridor conversations' of employees, which echoes the research of Brøgger and Jevnaker who frequently

witnessed non-designer interactions, daily experimentation, conjecture and backstage conversations in and between design projects. Further still, the authors include wholesale, retailing, product demonstrating and selling in their sphere of design input, along with the manipulation of the design space, noting:

“designing happens whenever someone (re)arranges and (re)configures particular premises or problem settings, performance and/or solution settings or otherwise takes action to change some forms and formatting and content into something else”
(Brøgger and Jevnaker, 2014, p128)

Brøgger and Jevnaker go on to state that ‘taken-for-grantedness’ of actions that are an implicit part of designing, along with ‘waremaking’ and the manipulation of design spaces means a designed thing is always the consequence of many seen and unseen actions. As such more layers of ownership are draped over that ‘thing’, making it increasingly difficult to see where the credit for it lies. Recent researchers looking into silent design seem to have convoluted the notion and perhaps even misinterpreted its central characteristics; perhaps in an attempt to say something different. For instance, Shams and Lam (2016) and Crana et al (2018) position silent design as a purposeful, managed way for some firms to do design, and go to some lengths to rationalise the pros and cons of adopting a particular design strategy - seen or silent. Yet such thinking seems to at once overlook the essential features of silent design, that is, it is unseen, unsought and silent designers are unaware of their influence on designs (Heap, 2008).

Having presented in this section a brief overview of how the notion of silent design has evolved, an examination of silent design in empirical practice reveals a number of issues, which are considered in the context of value creation in practice in the remainder of the chapter.

Silent Design and Value Creation in Practice

As already observed, design in industry, that is, the thinking, communications and actions of design agency, does not occur in a vacuum; rather it manifests in dynamic and often unpredictable environments where it is mediated by prior knowledge, tacit understanding and unseen, even enigmatic, design input. To further illuminate how this ‘randomness’ of design practice can occur in companies, and in turn attempt to illustrate who may be responsible for ideas and design input, the following section relates empirical observations of design activities, seen and silent, within a case study furniture manufacturer.

With 85 employees and annual turnover of c.£5 million in 2007, Company A, a furniture manufacturing company was well-established in the UK’s furniture design/manufacture sector. Although having a product catalogue containing over a hundred designs, the firm regularly took on

bespoke jobs. The company was large enough to require a design manager, a marketing team, finance and technical managers and a substantial shop floor workforce comprising woodworkers, machinists, metal fabricators and upholsterers. These teams and workers were duly supported by sales, purchasing, quality control and transport departments. Most of the commentary related here comes directly from observations and semi-structured interviews with company managers, as well as anecdotal evidence collected over the months of conversations and interactions with the company's staff. These observations were undertaken as part of a wider investigation into the characteristics of design knowledge and a company's capacity to locate, disseminate and manage design information as discussed by Heap (2008).

Three groups of workers in the company are presented to illustrate the diverse and seemingly unconnected the areas where design ideas can emanate, framed hereafter as (i) the Makers; (ii) the Quality Controllers; and (iii) the Purchasers.

(i) *The Makers* - the factory shop floor staff, the people in the firm that machined parts, assembled components and finished-off 'show' wood, upholstery and fittings were frequently making adjustments to furniture designs. The motivation for these changes varied; sometimes changes made assembly easier, other times adjustments were made to ease the processes of manufacture, and on some occasion's changes and adjustments were made because the original design did not work. On one occasion an order for several chairs that had not been produced for some years came in to the company. The shop floor staff set about machining components, reactivating the original jigs that helped assemble the components and prepare the finishing items. Midway through assembling the first chair, the process came to a sudden halt; some components would not fit together. Several attempts to re-machine parts of the chair had no effect; when the components were placed in the jig they would not align to the point they could be fixed in place. The solution to the problem came about through a casual corridor conversation with a member of the transport team. Several years earlier this employee had worked on the shop floor and recalled making this particular chair. What is more, he remembered the same problem of component non-alignment, with the problem laying with the assembly jig, which had not been made correctly. To overcome the problem, the assemblers took a hammer to the jig and knocked parts of it into shape every time it was used, so that the components aligned and the chair could be made. The solution was never communicated to the design team, so the problem persisted until the next time the chair was to be made.

This manipulation of the jig had resulted in changing the way the chair was produced, but probably more significantly, had resulted in a slight change in the chair's aesthetic. As one employee notes

'shop floor staff knew they were making adjustments to the design but never considered it especially significant' – "it just kept things moving on". Moreover, these modifications took place unseen by the company's managers.

(ii) *The Quality Controllers* - Similar design adjustments were revealed through observations of, and discussions with, the quality control supervisor in Company A's upholstery department. The supervisor described how he frequently instructed the upholsterers to make changes to the way in which items of furniture were upholstered. His instructions were based on practical issues as well as aesthetics based on experience: "I have an eye for what looks best and know how to finish off". He rationalised his instructions and adjustments through his belief that the design specifications he received often, '*left a great deal of information un-specified*', and felt his job was to "interpret many of the design specifications and complete the design" as he saw appropriate. However, as with the shop floor workers, he rarely, if at all, conveyed his adjustments back to the design team so they could be used on future furniture designs. Moreover, similarly to the machinists, his design interactions were unsought and unbeknown to the design office.

(iii) *The Purchasers* - the purchasing team was composed of three people located in an unimposing office on the shop floor and were collectively responsible for sourcing, negotiating a price for and procuring materials, fittings, machines, tools and components that went into making the company's furniture. On the face of it, the purchaser's connection to anything design-related was at best tenuous. However, the availability, delivery timescales and volumes of items purchased had a significant 'knock on' effect for the design office. This was confirmed by Company A's Design Manager on several occasions when describing 'having to make changes to design because certain materials and the like could not be obtained'. The interesting aspect of this observation and what makes it a convincing example of silent design is how unaware the purchasing staff were of the impact they could have on the design and development of furniture products. When asked, they felt their impact on the design process was "negligible" because they felt "distanced" from the products; in fact, most of the time never seeing finished items, and certainly never having any physical contact with the furniture, they found it difficult to appreciate their impact on designs. In a similar vein, purchasing activities were not directed by the design team (they were unsought), and in most instances, they went about their purchasing activities unknown (and unseen) by the Company's Design Manager. As we argue, these silent changes serve to change a designer's original concept (for worse or better) and therefore introduces the question of ownership and credit, which in commercial terms is governed by 'intellectual property'.

Valorising Design Through Intellectual Property

Intellectual property (IP) is defined broadly as “creations of the mind” by the World Intellectual Property Office (WIPO), as one of the 15 specialised agencies of the United Nations (WIPO, 2004). WIPO’s definition covers a range of rights. Some codified in national and international legislation and codes of practice (e.g. ‘registered design’), others more nebulous (e.g. ‘know-how’ and ‘trade secrets’). From a legal and political perspective, in the UK – and as far back as the English Statute of Anne, 1709- the key objective of intellectual property law has been to control and recognise the value that exists within the expression of creativity by preventing its wider unauthorised use. In other words, to protect the right to make copies (literally the “copyright”) of the elaborate illustrative designs within religious books. This is a critical point in the context of the creative economy since from the start, the protection was concerned with the recorded item and not the original ideas, and given the influential nature of British law, this ‘protectionist’ stance spread throughout the western world through the momentum of post-Enlightenment and Industrialisation, manifest in the International Convention of Berne, in 1886, concerned with copyrights, and the the International Convention of Paris in 1883, concerned with industrial design¹. These conventions were seen as critical given the impending impact and risks inherent in internationalisation – and monetisation – of innovative ideas, at that time literary and artistic works. Both conventions set minimum requirements for the existences of IP rights that became widely used and harmonised, and embedded into national laws, as reflected in the World Trade Organisation’s General Agreement of Tariffs and Trade (GATT).

In a contemporary context the valuation of so-called ‘creations of the mind’ are like any other property right. They allow creators or owners – or owners of patent, trademark, design or copyright works – to benefit from their own work or investment in a creation. These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the production of moral and material interests, resulting from authorship of scientific, literary, or artistic productions. Goodridge et al (2014)’s research (2014) on the valuation of these ‘creations of the mind’ indicates that UK investment in intangible assets such as intellectual property, workplace training and non-scientific R&D exceeds that in fixed assets (£137bn investment in intangible assets in 2008, compared to £104bn for fixed assets). Global licenses in

¹ Convention of Paris for the Protection of Industrial Property arts. 1st-3rd 20th March 1883. Berne Convention for the Protection of Literary and Artistic Works, 14th July 1967. 9th September 1886

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the patent and creative industries alone have exploded; worth more than £600bn annually (Hargreaves, 2011) with some estimations that 84 per cent of the value of assets in the top 500 businesses in the US are 'intangible' (Ocean Tomo, 2015).

There are some inevitable and increasingly apparent problems, which arise from valorising designs and 'creations' as intellectual property. Whilst WIPO, as an agency of the United Nations, is the global forum for intellectual property, which operates to a mandate to ensure governing bodies and national statutes are designed to a common understanding of 'international intellectual property', there is surprisingly little uniformity. Furthermore, there are diverse views on the recognition of value in the creative economy (see Webber, 2005; Darcy, 2013; O'Connor, 2015). Understanding intellectual property as the product of a creative mind has been translated into law variously e.g. as "originality" ([Copyright Designs and Patents Act 1988 source](#)), "innovative steps" ([Patents Act 1977 source](#)) in patents, and the identification of these features and their owners, has led to costly legal action. Take for example the case of Apple Inc. vs. Samsung Electronics litigation (2011-2018) that involved over 50 court cases with a [proposed](#) \$1bn award of damages.

As Hargreaves (2011, p3) notes 'proliferating use of IP can push up [IP](#) transaction costs ~~for businesses~~' and "block" [...new players businesses](#) from entering ~~the~~ markets". For incoming digital designers, the application of concepts of originality and ownership appear restrictive within the wider paradigmatic moves towards open access, open markets, and digital sharing (expressed through [for example e.g.](#) Creative Commons). This is [creating](#) an existential turmoil for the recognition of value within for example the design industry, which is especially marked in two areas.

~~(Subconscious)~~ Copyright Infringement

Firstly, the turmoil can be seen within ~~the~~ copyright law itself, that exists in technical drawings, computer software or databases, where the "originality" does not require an element of 'newness' from existing work or be required to carry the common symbol ©, as the key test for the existence of potential value and a warning against copying. Secondly, is the issue of 'subconscious copying', which has been exposed most commonly through law cases - e.g. Thicke's 2013 hit "Blurred Lines", which a court found copied Marvin Gaye's "Got to Give it Up", and H&M's (2015) [legal action against suing of](#) Forever 21 for a copyright infringement of its "Beach Please" tote bag. Such examples highlight the vagaries of working practices in creative areas and of the need to record design creations and the routes to design changes, including the inspiration and the creative talent [from form](#) all participants in the process. Traditionally emphasis has focused on the original designer, noting the insight and experiences that originate with the designer if the design is new,

and the ultimate user. ~~This His~~ is exacerbated by some common industrial myths such as ‘5 changes to a fashion design secures originality’, that posting the design to yourself or marking this with © secures ownership, and that ‘everything places on the internet is free to use’. Added to this is the problem of identifying ownership. Outside of state-registered rights (~~patents~~), registered design or trade marks where ownership is more certain, the presumption is that the original ~~creator designer~~ is the owner of the IP. Yet, where ~~the~~ design of ‘creations of the mind’; are the product of teams the ownership ~~may be~~ is ambiguous unless stated clearly. For example, in 2009, the music industry was shocked by the decision in Fisher vs. Brooker where 40 years after the heyday of ‘White Shade of Pale’, the keyboard composer was able to claim co-ownership and therefore royalties due to the distinctive musical chords that added to the background melody. Other examples have included designers not being aware of the ownership of IP work by independent contributors, especially where there has been an absence of contract (e.g. ~~Doc Martens Rolls Royce~~) and ~~exposing exposing~~ the potential risks found in cases of ‘hidden design’.

Remix Culture

The second deeper element that challenges the foundations of intellectual property is that of the ‘Remix Culture’ or the free movement culture, which finds the basis of IP rights and ownership, utterly unsuitable for a modern digital culture that uses alternative senses of value via an ability to share assets through peer-to-peer file sharing. Lessig (2008) argues for example, that creative groups have found a new way of working involving digital sharing and mash-ups that support their creativity and that the criminality of copyright infringement law is too “heavy-handed” and which here we argue is overly rigid and austere. Whilst his focus is largely on the artistic elements of IP, Rostama (2015) writing for the WIPO, acknowledges that such communal sharing in creative production has a longer history that many imagine and ‘mash-ups’ would be protected currently under the global defence that actions “do not unreasonably prejudice the interest of the legitimate rights holder” (~~Art 9 Berne 1886~~ ~~xxx~~). At the same time, ~~Rostama Rostama~~ concedes that there is uncertainty in this area as evidenced by the long running dispute of Lenz vs. Universal Music. This is particularly problematic where individuals hold personal (~~moral~~) ~~ethical~~ views of communal sharing, consistent with the ‘free culture movement’ and collaborate in the field of industrial design, which is subject to commercial and legal parameters of intellectual property ownership (see Koutras, 2016).

Conclusion: Problematising Value Creation and Design Ownership

In this chapter, the mainstream framework of intellectual property rights as a proxy of creative value have been examined. At the beginning of the chapter, the design industry was drawn upon to contextualise the rise of ‘creative value’ in the UK context but also more recently, to examine

the emergence of 'hidden design'. Hidden design in this context occurs when individuals participate in the design process, sometimes unwittingly or subconsciously, but nevertheless in a way that militates an original design. The existence of hidden design in a furniture company as discussed earlier raises 3 important points in relation to intellectual property and the way in which creative value is currently connoted.

Firstly, the case study of the furniture design manufacturer serves to expose the value that non-designers can make in the design process, which resonates with Asheim and Coenen's (2005) work in Northern Europe on innovation systems for diverse knowledge forms including the way in which innovation occurs tacitly when using culturally rich symbolic knowledge. It raises the question however about whether some workers, who currently contribute to the creative design process e.g. through purchasing, problem solving, and quality control, should be recompensed in some way, in a framework, which recognises only the originator of the design. As silent design has been shown to have a positive effect on the development of products, the question of who should be credited with this and profits from this is raised. Intellectual property and the ownership of ideas is regularly cited as being the life blood of competitive companies, yet in many instances, the accurate ownership of an idea that has travelled the path of design in a firm becomes ambiguous.

Secondly, and drawing on the same concept of hidden design, the chapter leads to the logical question of whether there are inherent risks associated with hidden design on e.g. the shop floor, that might expose a company or designer to copyright infringement. In these situations, who is most at risk?

Finally, the chapter highlights the current inadequacies of the current copyright framework, which [faces challenges seems utterly unsuitable](#) for example the free culture movement described earlier, and for emerging trends such as 'hidden design'. As a proxy of creative value, the issues of IP need to be understood and embedded within all aspects of the design process, whether hidden or not. That said, the creative economy is operating in a context of the first generation of [adult \(millennial\)](#) designers, who have emerged and honed their design skills within a free culture movement entailing the wholesale sharing of ideas and designs e.g. P2P file sharing, social media, and open access channels, and where creative value can emerge through a complex web of open innovation (involving users and customers), from mash-ups, and form sampling. There are several ways to view this. The role of the free culture movement needs to be fully appreciated in commercial terms for its impact in supporting and producing design value; [without which IP may act as a barrier to creating value and developing the UK's creative value to its full potential](#). At the same time, there is the risk that where individuals do not wish to record or own their creative contributions, the potential value will be lost and limited to e.g. a personal media record or social

media event, whilst the ~~costly~~ route of intellectual property rights may [be unfairly perceived](#) ~~emerge~~ as the reserve of the elite ~~and effectively hinder the value creation process~~. We conclude by arguing that the current commercial and legal schema in which valorisation occurs ~~is outmoded~~ ~~and~~ requires [investigation of](#) more nuanced frameworks and tools.

References

Asheim, B.T. and Coenen, L. (2005) Knowledge Bases and Regional Innovation Systems: Comparing Nordic Clusters, in *Research Policy* 34 (8), pp1173-1190

Benton, S., Miller, S. and Reid, S. (2018) *The Design Economy. The state of design in the UK*. Brighton: The Design Council

Blair, T. (1998) Best of British for the Millennium, Speech at the Design Council, 2 April 1998.

Brøgger, B. and Jevnaker, B.H. (2014) The Cultural Production of Commodities: Understanding the art and gaps of silent and seen design, in *Society and Business Review* 9(2), pp124-138

Candi (2009) xxx, Centre for Business, Arts and Technology, Islington, London.

Corfield, K/G. (1979) *product Design*. London: National Economic Development Office

Crana, xx el al (2018)

Darcy, J. (2013) Under-regulated or Under Enforced: Intellectual property, the fashion industry and fake goods [in: European Intellectual Property Review 35\(2\),pp82-92](#) ~~xxxx~~

O'Connor, S. (2015) To Whom Would the Court Give a Whole Lotta Love? English Copyright and the Blues, in [EIPP 344](#) ~~xxx~~ [European Intellectual Property Review 37\(6\),pp344-354](#)

DCMS (2001) *The Creative Industries Mapping Document, 2001*. Department of Culture, Media, and Sport. London: TSO

Design Council (2017) *Designing a Future Economy. Developing design skills for productivity and innovation*. Brighton: The Design Council

Design Council (2018) *The Design Economy 2018. The state of design in the UK*. Brighton: The Design Council.

Goodridge, P., Haskell, J. and Wallis, G. (2014) *UK Investment in Intangible Assets*. London: NESTA

Hargreaves, I. (2011) *Digital Opportunity. A Review of Intellectual Property and Growth*. London: DBIS <https://www.gov.uk/government/publications/digital-opportunity-review-of-intellectual-property-and-growth> (last accessed [12 October 2018](#))

Heap, D. (2008) xxx

Jerrard, xx. and Hands, xx. (2008)

Koutras, N. ~~xx~~ (2016) [History of copyright, growth and conceptual analysis: copyright protection and the emergence of open access, in Intellectual Property Quarterly 2 pp135-150](#)

Lessig, L. (2008) [Remix: Making Art and Commerce thrive in a Hybrid Economy](#), Bloomsbury, London

Moultrie, J., Clarkson, P.J. and Probert, D. (2007) Development of a Design Audit Tool for SMEs, in *Journal of Product Innovation Management*, 24(4), pp335-368

Ocean Tomo (2015) Annual Study of Intangible Asset Market Value. <http://www.oceantomo.com/2015/03/04/2015-intangible-asset-market-value-study/> (last accessed 12 October 2018)

Rostama, G. (2015) Remix Culture and Amateur Creativity: A copyright dilemma, in *WIPO Magazine* 2015(3) [online paper](#), (last accessed 12 October 2018)

Shams, M. and Lam, B. (2016) Strategic Design Versus Silent Design: A reckoning, in *DMI Review* 27(3), pp28-33

Stevens, J., Moultrie, J. and Crilly, N. (2009) Design Dis-Integration Silent, Partial, and Disparate Design, in Proceedings of 'Undisciplined! Design Research Society' Conference 2008, Sheffield Hallam University, Sheffield 16-19 July 2008

Tether, B. (2003) How to Define a new Product and a New Process: a review of existing approaches. Report for Scottish Enterprise.

Thatcher, M. (1982a) Product Design and Market Success, seminar at 10 Downing Street, 25 January 1982

Thatcher, M. (1982b/1986) Industrial Design, in *Engineering*, 31 May 1982

<http://www.margaretthatcher.org/speeches/displaydocument.asp?docid=104951>. (accessed 12 October 2018)

Utterback, J.M., Ekman, S. and Tether, B. (2006) *Design-Inspired Innovation*. World Scientific Publishing Company

Walsh, xx. (1996)

Walsh, xx. And Roy, xx. (1983)

Walsh et al (1992) xxx

Webber, D. (2005) [Intellectual Property- challenges for the future, in European Intellectual Property Review 27\(10\) pp345-348](#)

Williams, B. (2007) The Finniston Report 1980, in *Policy Studies* 1(1), pp45-52

WIPO (2004) What is Intellectual Property. World Intellectual Property Office. www.wipo.int (last accessed 12 October 2018)