



## Creating Economy: Enterprise, Intellectual Property and the Valuation of Goods by Barbara Townley, Philip Roscoe and Nicola Searle (OUP); 2019; 1st edition, 224pp, £55.00 hardback £35.75 kindle)

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## LEARNING RESOURCES REVIEWS

Edited by Ben Waters

**Creating economy: enterprise, intellectual property and the valuation of goods** by Barbara Townley, Philip Roscoe and Nicola Searle, Oxford, Oxford University Press, 2019, 1st edition, 224 pp., £55.00 (hardback), £35.75 (kindle)

*Creating Economy* is a welcome and timely addition to the literature now that intellectual property (IP) education is no longer confined to the law school. Other disciplines are waking up to the importance to their students of an awareness of intellectual property rights (IPR) regulation and management. The creative disciplines have begun offering IP education on higher education programmes (University of the Arts London recently appointed its first IP academic).

The authors have written an economic analysis of the place occupied in the market by the creative industries. They see creativity “at the vanguard of contemporary capitalism, valorized as a form of capital in its own right” (p. 1). In the introductory first chapter they ask how the creative economy comes about, and what is economic about creativity? They note that the term “creative industries” is in fact a political rebranding of the term “cultural industries”. They identify the “art–commerce relation” which they go on to explore in depth in subsequent chapters. For intellectual property academics, the authors’ identification of an IP/IPR nexus, their “central concept”, is particularly interesting. They see IP as an ideational object and IP rights as propertised IP. IP in the creative industries, they suggest, is the creator’s expressive, tangible form whilst IPR links the idea and its expression to property rights. Chapter 2 explores how IP/IPR functions through copyright law’s requirements of originality and authorship law to create market objects.

Interviews with self-employed, micro- and SME organisations from the creative industries ensure a vibrant selection of insightful extracts. One hundred and twenty-two creatives from design, fashion and textiles, computer games designers, TV, film, publishing, music, theatre and dance offer contemporary perceptions of the way IP rights legislation operates, from the perspective of creative industries players.

Chapter 3 picks up the ambivalences of business and creativity. The natural goal of a creative industry player may well be the materialisation of ideas into tangible, valuable, tradable products. But that journey from idea to tradable product exposes creatives to the shortcomings of the IPR system, as well as the misunderstandings and disappointments with which engagement with the IP legal system is rife.

The authors offer an invaluable product to the law school IP academic looking to deliver IP insights to creative students. Law for non-lawyers must always be delivered in the context of the receiving students’ primary discipline, and *Creating Economy* does just that for the creative industries.

Chapter 4 is titled “Managing Uncertainty” and explores the risks involved when nobody can predict what creations will fly and which will flop. An IP lawyer may not often get to hear first hand about the challenges that face creatives simply because the negatives

surrounding IPR (see above) work against their engagement with the legal system: “Given the constraints of establishing a business, often with limited resources, SMEs and micros frequently neglect IP, thus making it difficult for businesses to capture value” (p. 185). The authors recognise this problem, which they address in their closing chapter.

Chapters 5, 6 and 7 discuss “Value”: “Constructing”, “Realizing” and “Protecting”. They refer back to the personal qualities of “pleasure, pride and possession” (p. 109) that accompany an IP “creation”, whilst suggesting that the same “creation” will need to be “praised, prized and priced” (p. 102) if it is to generate income. The authors suggest that IP stands both as a measure of esteem within the field, and as a means of income generation. The authors raise the interesting question of the value to students of the goodwill, tacit knowledge and networking benefits they receive from tutors and educators, when those students then go on to be their competitors! It is rare in an IP textbook to see the value of substantive IP rights discussed alongside the symbolic value of IP derived from quality, differentiation, ethos, and reputation. The diversity of creative communities featured includes performing arts (dance and theatre) communities, whose experience of commercialising IP/IPR is significantly different from that of the literature, music and the plastic arts communities.

Chapters 5, 6 and 7 are an excellent “backcloth” to formal teaching of IP exploitation, through licensing and/or assignment contracts. The creatives interviewed (from publishing and design, music and gaming in particular), provide valuable insights into the realities facing a creator wishing to exploit their IPR. “In sum, work across the creative industries is subject to greater pressures of fragmentation, competition and insecurity” (p. 130). On protecting value, the authors found interviewees made little use of IP. They identify barriers to its effective use and reluctance to “go to law”, primarily because they don’t think they can afford it, preferring to rely on “early mover advantage”. These findings are supported by the literature, including most recently the Intellectual Property Office’s *Research into Designs Infringement: Attitudes and Behaviour of Design Rights Owners Towards Infringement 2018* (Intellectual Property Office, 2018).

The authors conclude that IP/IPR is “a crucial device in ensuring that creative industries function as industries” (p. 178), whilst acknowledging that making money, amongst creatives, is still considered to be distasteful. They recognise that their study has implications for higher education, as higher education policies focus on the business skills needed by those embarking on careers in the creative industries. Such skills will include those from which the ability to produce intellectual property is generated.

*Creating Economy* provides invaluable insights into current thinking about IP/IPR in the creative industries. Where an IP law academic may take a positivist approach to intellectual property law and its business benefits, this book injects an element of caution. It reminds the lecturer to try and understand intellectual property jurisprudence from the perspective of the rights creators, and the commercial world they inhabit.

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