

# ReCreating Europe



## FREQUENTLY ASKED QUESTIONS (FAQS) AND GUIDELINES FOR THE CREATIVE INDUSTRIES

Authors

Work Package 4

## FAQS ON CODES OF BEST PRACTICE

### **Do documentary filmmakers always need to obtain permission from rightholders to reuse copyright protected materials in documentary films?**

No, there are various instances where the law permits free usage of copyrighted materials, for instance, to report on current events, to illustrate, critique or comment on social, political or cultural issues or to engage artistically with existing materials for purposes of pastiche. Documentary filmmakers are also free to borrow ideas and to reuse works that are in the public domain. In reality, however, documentary filmmakers often face situations where film financiers, producers or archives demand them to clear rights, even if this is not legally required. That is why the *reCreating Europe* team has developed Codes of Best Practices to inform documentary filmmakers and all other entities involved in the process of making documentary films about cases where existing materials can lawfully be reused.

The Code of Best Practices in Creative Reuse for Documentary Filmmakers can be found at the following link: <https://zenodo.org/record/7180853#.Y5rzZuzP3UK>

### **Do digital heritage curators always need to obtain permission from rightholders to reuse copyright protected materials in immersive experiences or other experimental products?**

No, there are various instances where the law permits free usage of copyrighted materials, for instance, to critique or comment on social, political or cultural issues, on the works themselves or on other works, to engage with existing works for purposes of parody or pastiche, or to use existing works for certain AI projects. Digital heritage curators are also free to borrow ideas and to reuse works that are in the public domain. In reality, however, digital heritage curators often face legal uncertainty since it is not always self-evident which uses the law permits. That is why the *reCreating Europe* team has developed Codes of Best Practices to inform digital heritage curators creating immersive experiences or other experimental products about cases where existing materials can lawfully be reused.

The Code of Best Practices in Creative Reuse for Immersive Experiences can be found at the following link: <https://zenodo.org/record/7180861#.Y5rzmOzP3UK>

*FAQs by Stef van Gompel*

## FAQS ON NEGATIVE SPACES OF INTELLECTUAL PROPERTY

### **What are negative IP spaces?**

Negative Intellectual Property spaces are sectors of the economy to which - for a variety of reasons - the standard tools of intellectual property do not apply. Interestingly, some of these sectors show high levels of creativity and innovation even in the absence of the incentives of intellectual property. Negative IP spaces can be found in a large variety of sectors, from high cuisine, to fashion, street art, stand-up comedy, open software, and pornography.



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## How is it possible to classify negative IP spaces?

In our interim report, we suggest a new taxonomy of negative intellectual property spaces, identifying three main categories of negative IP. The first is what we call 'commons-based systems'. These are sectors in which actors take an active decision not to resort to intellectual property. Therefore, these are often negative IP spaces by choice (and not because formal IP does not apply to the specific sector). Examples of these commons-based systems are open source, free innovation, collective invention, and open science. The second category is what we call 'social-norms based systems'. These comprise sectors to which formal IP does not apply, and in which the community of innovators develops bottom-up informal norms to organise inventive activity. Examples of these systems comprise street art, high cuisine, stand-up comedy, and tattoo artists. The third category comprises what we label 'knock-off systems'. These are sectors in which copying is not policed in any way, and is entirely included in the business model of the actors. Examples include the fashion industry and adult entertainment.

## What does the study of negative IP spaces suggest about the mechanisms of copyright?

The study of negative IP spaces shows how intellectual property in general - and copyright in particular - does not necessarily apply in the same way to all economic sectors. Some negative IP spaces emerge because actors consciously decide to forgo their claim to intellectual property rights, and follow different kinds of incentives and rewards. Negative intellectual property spaces also show how the grounded mechanisms of innovation incentives may differ from what is generally assumed in policy circles, and can contribute to a better understanding of how to foster creativity and innovation.

*FAQs by Raffaele Danna*

## FAQS ON NEWLY EMERGING BUSINESS MODELS IN THE CREATIVE INDUSTRIES

### What is newly emerging business model?

Albeit the term “business model” bears a great share of conceptual heterogeneity in academic literature (Massa et al., 2017), studies tend to confirm that a business model is a set of means or operation modes that compete in the economic market. In other words, the business model paints a picture of how the company creates and captures value (Da Silva & Trkman, 2014; et al., 2017) The current study investigates emerging business models, the models that are relatively new or greatly triggered by or built on digitalisation. Field wise, it focuses on a selection of emerging business models in creative industries: the influencer economy (influencers), the circular economy (upcycling SMEs), and the maker economy (CAD sharing platforms).

### What is the nature of influencer business model in relation to IP?

The influencer economy builds value through social media networks. Influencers as brand ambassadors help to promote services and products. Influencers are born digital, and at the same time, they build their value by branding themselves. In other words, the “product” is the creator.

In many ways, influencers are brand advocates and influencer marketing is a rapidly growing segment in marketing (IPO, 2021). They represent the case of shared IP – influencers themselves are a brand, yet they promote other brands at the same time (IPO, 2021). Studies have found how social media influencers have profound impact on the buying decisions of some consumers (Wielki, 2020), most vulnerable being the young



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cohort of consumers, e.g. the danger that social media influencers may also convince their followers to buy counterfeits (IPO, 2021).

### **What is the nature of circular fashion SMEs in relation to IP?**

Circular economy is “an economic system that replaces the ‘end-of-life’ concept with reducing, alternatively reusing, recycling and recovering materials in production/distribution and consumption processes” (Kirchherr, et al., 2017, p. 229). Circular fashion SMEs are greatly built on the creator or the brand, and due to the small size of typical enterprises as well as particular elements involved in their operation, they need to digitalise their business process. For example, for limiting the waste and stock of products, they tend to digitise their distribution channel by facilitating pre-orders and un-connecting themselves from physical selling points or selling their products in large retail shops. Moreover, fashion has been declared as being one of the most IP-intensive industries due to complex copyright environment (Härkönen, 2020). The problem becomes even more acute when we talk about reusing materials that may be protected by trademark.

### **What is the nature of maker economy in relation to IP?**

Maker economy, also referred as maker movement, reflects value creation by collaborative production (Deloitte, 2014). Maker movement is built on digitalisation and collaboration, where makers “learn from others, socially construct their own projects, and contribute to the projects of others” (Browder, et al., 2019, p. 462). In most cases, platforms facilitate and accelerate the spread of maker economy. For example, many platforms allow maker communities to access free cloud-based collaboration environments that used to be only available to companies due to high cost. A good example of the latter is the growth of CAD sharing platforms like Thingiverse or GrabCAD, where people with engineering skills across the world are able to collaborate with each other in solving various engineering design related challenges.

### **Does copyright work similarly in all creative industries?**

The case studies about influencers, circular fashion SMEs and free computer-aided-design (CAD) sharing platforms users reveal how the role of digitalisation differs greatly across the creative industries, and also, the role of IPR is vastly different in such new emerging business models. In case of influencers, users do not see a need for strict copyright protection. Circular fashion SME founders perceive their field to be so bound on quality and specific know-how which makes copying rather difficult. Even users of free 3D design sharing platforms (e.g. GrabCAD, Thingiverse) have vastly different opinion on copyright – yet this field is most prone to copyright infringements to happen.

### **What are the main challenges in terms of copyright in case of 3D design sharing platforms?**

We could signpost four types of asymmetries as IP related challenges for this field. First, geographical asymmetry: online platforms have a global reach, as the internet has no territorial limits, but legal regulation is strictly related to the legislation of the country where they operate.

Second, informational and linguistic asymmetry, which represents a situation where one party of the transaction process has a knowledge gap in terms of copyrights. For example, at the moment the informational asymmetry is strongly inclined in favour of the downloader - untraceable downloaders.

Third, asymmetry in size (too small to protect yourself) manifests in how solo creators are always at the weaker legal position than platforms or companies as users. From the experience of CAD makers, they feel



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how the overall question of protecting one's intellectual property rights comes down to whether you are a small or big player. In other words, individual engineers have rarely resources or knowledge to protect their rights even when they are severely violated – this applies to copyrights, but also to patents

Four, sectorial asymmetry: some fields are more sensitive in terms of IPR due to two main reasons. From one side, because of the safety of human beings, and from the other side, for the sake of gaining and keeping competitive advantage. The safety issue seems to be most of all related to the military and medicine

### **What does it mean that copyrights are territorial?**

That copyrights are territorial means these property type rights exist on a per country basis. Although copyright laws across the EU are very much alike in terms of what works they protect and how, when creating a work the author(s) obtain a separate copyright for each Member State, so they have a bundle of 27 national 'property' rights.

### **What would be the advantage of having one copyright for the entire EU?**

If the creation of a work gave rise to one copyright for the entire EU and not to 27 separate national copyrights, it would be easier to trace who owns the right, how to obtain permission for use of the work (especially in the online environment) and it would be easier to enforce for the rightholder. Also, the single market would be less easily carved up along national geographic borders on the basis of national copyrights, bolstering the free flow of goods and services.

### **Reading**

D4.5: Newly emerging business models in the creative industries in the wake of increasing digitalisation

<https://zenodo.org/record/7118715#.Y5rcF3ZBxPY>

*FAQs by Eneli Kindsiko, Ragne Kõuts-Klemm, Helen Eenmaa and Ingmar Pastak.*



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THE RECREATING EUROPE PROJECT AIMS AT BRINGING A GROUND-BREAKING CONTRIBUTION TO THE UNDERSTANDING AND MANAGEMENT OF COPYRIGHT IN THE DSM, AND AT ADVANCING THE DISCUSSION ON HOW IPRS CAN BE BEST REGULATED TO FACILITATE ACCESS TO, CONSUMPTION OF AND GENERATION OF CULTURAL AND CREATIVE PRODUCTS. THE FOCUS OF SUCH AN EXERCISE IS ON, INTER ALIA, USERS' ACCESS TO CULTURE, BARRIERS TO ACCESSIBILITY, LENDING PRACTICES, CONTENT FILTERING PERFORMED BY INTERMEDIARIES, OLD AND NEW BUSINESS MODELS IN CREATIVE INDUSTRIES OF DIFFERENT SIZES, SECTORS AND LOCATIONS, EXPERIENCES, PERCEPTIONS AND INCOME DEVELOPMENTS OF CREATORS AND PERFORMERS, WHO ARE THE BEATING HEART OF THE EU CULTURAL AND COPYRIGHT INDUSTRIES, AND THE EMERGING ROLE OF ARTIFICIAL INTELLIGENCE (AI) IN THE CREATIVE PROCESS.



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