

THE COMPREHENSION OF CREATIVITY IN THE CONTEXT OF INTELLECTUAL PROPERTY LAW

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ABSTRACT: *Intellectual property laws seek to secure and enforce the rights over the creative outcomes of the mental capacity of human being. The regimes of intellectual rights take on multifarious social and economic functions most significant of which is holding the balance between social benefit and the right holder's benefit meanwhile not impeding the ambition for further creativity. Tough, the promotion of creativity demonstrates a universal objective of IP laws; legal scholarship tends to abstain from elaborating this phenomenon. Yet, beyond any doubt, the cognition of creativity is equally important as intellectual property law and policy making in order to go beyond the generic statement that IP laws aim to promote creativity. This study, therefore, aimed at describing the creativity notion within the legal context in consideration of various psychological, social and economic perspectives. The study, in this way, seeks to discuss outstanding theories as to the justification of intellectual property rights and their relevance to existing IP regimes. Secondly, to mention the general perception of creativity and the nature of creative activities on the basis of contemporary businesses and industries. Finally, in a bigger picture, we tend to illustrate the impact that IP laws figure over creativity.*

KEYWORDS: *intellectual property, creativity, justification theories of IP rights, promotion of creativity*

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1. INTRODUCTION

Intellectual properties (IP) are roughly explained as products of intellectual efforts of human-being. In this manner, both literary/artistic works and inventions originated from creative thinking. In today's world artistic and inventive creativity, thus, advancements intellectual property field puts an indication to the development level of countries. Intellectual property sphere demonstrates the main area through which the law seeks to motivate and regulate human creativity (Mandel, 2011). Evidently, novelty in both literary/artistic works and inventions requires a certain level of creativity as an antecedent, hence, IP laws should promote, and certainly should not impede, creativity (Mandel, 2011). Promotive impact of intellectual property laws on creativity is often mentioned by legal scholars, indeed, promoting creativity is perceived as a function of intellectual property laws. Concordantly, several legal texts and substantive laws of different countries also convey, thus acknowledge, this very function. For instance, the United States Constitution equips the law-making body, namely the Congress, with

power “*To promote the progress of science and useful arts...* ”¹; meanwhile, Hungarian copyright law points an explicit link between the law and creativity by stating “*Modern copyright legislation keeping abreast of technological development plays a decisive role in the promotion of intellectual creation...* ”²; likewise, Turkish industrial property law, in its preamble, refers to a similar function of IP laws thusly: “*Industrial property rights, by promoting creativity and innovation, establish a competitive environment in this field, thus facilitating economic and social progress.* ”³

As the given examples support, promoting further creativity and correspondingly further progress both in literary/artistic works and industries figures a mutual objective of IP laws. However, in the context of comprehension of creativity concept and creative process, the legal scholarship seems to have stepped aside, leaving the floor solely to psychological science. Conventionally, cognition of creativity has been seldom considered as a legal matter, meaning, it has hardly subjected to legal analysis. Ergo, the legal scholarship does not usually go far beyond a shallow statement that “Intellectual property law aims to promote creativity”; leaving shady the perception of creativity and its relevance in legal context. This being the case, it is hard to disagree with the remark of G. N. Mandel that IP laws remain moored in archaic stereotypes as to creativity (Mandel, 2010).

As we primarily adopt a basic statement that “IP laws aim to promote creativity” as a departure point in order to probe into creativity cognition, revisiting the theories of IP right justification is fairly important. In other words, when the question of “Why should these rights be granted?” is answered, it is more likely that the underlying motivation for creativeness will reveal. On that note, the first part shall center upon justification theories and criticism in with reference to modern IP laws and policies.

2. THE BASIS OF IP RIGHT AND RATIONALE OF PROTECTION

Justification of the rights certainly is essential in all spheres of law. Naturally, various theories throughout the time sought to explain the basis of property rights. Justification of intellectual property rights -in consequence of being a property right after all- have demonstrated parallelism with general theories of private ownership. Nevertheless, in so far as intellectual creations somewhat subsume inner world of its creator and amount to intangibles, they are often deemed more sentimental than the classic properties. Yet, these novel works historically undertake more sophisticated missions such as promoting greater human flourishing (Mandel, 2010) and pioneering further progress in art and sciences. To this end, justification of the rights over this sort of properties should normally have nuances and be dependent on some moral factors.

With respect to IP rights, we are of the opinion that the term “justification” ought to be interpreted in a broad sense, which, simultaneously covers the ground of these rights and their purpose. The theories in the context widely tackle creative continuum. At this

¹ Article I, Section 8, Clause 8 of the United States Constitution Empowers Congress

² Foreword of Hungarian Act No. LXXVI of 1999 on Copyright

English text is available at: http://www.hipo.gov.hu/English/jogforras/hungarian_copyright_act.pdf

³ Para. 2, General Preamble of Turkish Industrial Property Code 6769

Only Turkish text is available at: <http://www.turkpatent.gov.tr/TURKPATENT/resources/temp/43C570CD-427C-4C99-B275-FB006ECD6870.pdf;jsessionid=7B48199AECCAB514F1D87481D16E719>

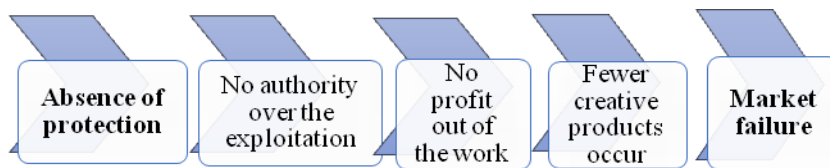
point, assessing the source of the rights from the standpoint of each theory becomes critical. So much so that, each theory of justification may seem to credit a different purpose of IP rights, therefore, the underlying motivation to create will be divergent. On that note, three mainstream grounding theories should be addressed. However, it is noteworthy that there exist further theories regarded this specific question.⁴

2.1. Utilitarian theory

Utilitarianism in the domain figures the most commonly accepted and favored standpoint. Similarly, it has been the prevailing approach to understand intellectual properties in the United States, likewise, in Common Law legal systems (Fromer, 2010). Indeed, the wording adopted in the United States Constitution, as we referred in the first part of the study, bases the legislative competence of the Congress in intellectual property field upon the objective “*To promote the progress of science and useful arts.*”

With respect to the utilitarian perspective, creating something of value to the society, thereby maximizing the net social welfare ought to be the core purpose of intellectual properties and IP rights structure. Although producing ‘social benefit’ figures the primary objective, adopting a purely social function perception will nearly amount to expropriation of intellectual creations. Nevertheless, those who come up with something unique and socially valuable would, naturally, expect their exerts to pay off. Failing that very likely to result in a lack of motivation for intellectual productivity (Karahana et al., 2012). In other words, without IP protection, inventions and literary/artistic works could not be saved from widespread copying and distribution once they are made available to the public (Mandel, 2014). Insofar as the creators, in this way, become unable to control distribution and copying, they could not profit from the intellectual work as desired. Potential inventors and authors, therefore, would be demotivated and reluctant to invest their time, effort and resources into intellectual works. As a result of which there would occur a market failure in innovation (Mandel, 2014).

Chart 1: Probable impacts of lacking IP protection, resulting in market failure.⁵



To the extent this risk of market failure is taken into account, utilitarianism idealizes an IP protection regime aimed at striking a balance between the power of exclusive rights

⁴ For further studies concerning IP rights justification see;

Fisher, W, 2001, *Theories of intellectual property: New essays in the legal and political theory of property*, Cambridge University Press.;

Frye, BL, 2016, ‘Machiavellian intellectual property’, *U. Pitt. L. Rev.*, vol. 78, pp. 1-15.;

Du Bois, M, 2018, ‘Justificatory theories for intellectual property viewed through the constitutional prism’, *Potchefstroom Electronic Law Journal*, vol. 21, no. 1, pp. 2-38.

⁵ The chart has been created and implemented by the author.

to trigger the creative fertility and the offsetting tendency of such exclusivity to curtail widespread public enjoyment of socially valuable creations (Fisher, 2001). On that account, utilitarianism is concerned with giving people incentives to make creative products and, thereby, rewarding people for navigating and completing the creative process so that something of social value could take shape (Fromer, 2010).

One may, therefore, thoroughly assert that this end theory openly acknowledges the power of monopolistic rights, more particularly the potential profit enabled by them, to stimulate the creative process, thus intellectual productivity. Moreover, departing from the very nature of intellectual property rights -granting a series of exclusivities to the right holder, meanwhile limiting these monopolistic rights by a definite period of time- the utilitarian approach seems coherent with the common concept of the IP rights.

Nevertheless, one major criticism, in the context of copyrights, is directed to the utilitarian understanding of intellectual properties; glossing over the moral rights. Up until the last two decades, the moral rights have figured fairly minor part in the development of copyrights across common law countries where the utilitarianism prevailed (Fisher, 2001). The utilitarian approach generally tends to push the moral rights into the background and to put its reference mostly to the pecuniary promotion of creativity. Moral rights, however, form the literary/artistic work creators' rights to control the public disclosure and circulation of their work, as well as attribution of their works to themselves; and, certainly, to protect the integrity of their works preserving them from mutilation or destruction of any kind (Fisher, 2001). Clearly, though, the content of said moral rights represents and is linked to the personality element injected into the work by the creator. Accordingly, disregarding such rights could seriously endanger creators' intrinsic motivation which stems from the expectation of taking the credit for their work and from the reliance on preservation of the integrity of future works.

In a nutshell, the utilitarian theory is based on the assumption that the author or inventor would give up creating in the lack of incentive, thus the social benefits would be impeded. It is vital, however, to note that whether an artist or inventor would give up on creating when they are not incentivized in utilitarian meaning is not of linear certainty. Quite the contrary, whether intellectual productivity will stop due to lack of incentive is connected largely to the motive why the creator engages in the creative work, more specifically to whether they engage in the work is self-interest or with external motivations.

2.2. Labor theory (Lockean theory)

Some scholars argue that intellectual property rights are not distinct from the other forms of property rights -not even from the rights to live and to liberty- thereby, they should not be perceived as a sort of incentive granted by the state so as to bring forth new knowledge (Moore, 2012). In this view, Locke's general theory of property should be applicable to intellectual properties, meaning that, authors and inventors should hold natural rights in their creative works (Mandel, 2014). This is mainly based on individualist guidelines that whoever put their time, effort and labor in the work should automatically and naturally be entitled to the rights over the end product as a fruit of their labor invested. Similarly, as regards to creative works, creators are morally entitled to control the copying and distribution of inventions or artistic outcomes, as fruits of intellectual labor invested.

Conversely, though, what counts as intellectual labor remains ambiguous. So as to answer this question, Professor William Fisher puts forward -at least- four possible premises; (i) time and effort invested; (ii) arduous activity in which one would rather not engage; (iii) activity results in social benefit; (iv) creative activity of producing new ideas (Fisher, 2001). However, he adds no selection would be readily apparent. It should be, secondarily, admitted that the individual works possess a weaker place in front of collective works; insofar as creative activities, specifically regarding inventive creativity, are carried out mostly by business enterprises. Employees of creative businesses in modern times generally engage in the works and projects under labor contracts, which often, stipulate clauses for employees to leave the ownership of intellectual properties they created during the course of the work (a.k.a. pre-invention assignment). Secondly some jurisdictions across the world rule for the patent ownership of the universities and research institutions over the inventions generated by the academics while on duty. Concordantly, those who invested their either intellectual or physical labor in the creative work would hardly become the right holders of the work in question. Hence, they are not fully entitled to enjoy the rights over the end product.⁶ On this note, one may challenge the actual relevance of the labor theory to the institutionalism in contemporary times.

2.3. Personality theory (Hegel & Kant)

Personality theory of justification of intellectual property rights draws a great attention to self-expression and self-realization involved in intellectual works. Accordingly, the creative process itself captures the author's personality and implants it into the resulting work (Fromer, 2010). The expressions deemed to form the creative works are, basically, extensions of creators' personality, thereby, creators are naturally entitled the rights over the things which are of their personalities. Consequently, the creations are deemed protection-worthy to the extent that they reflect the creator's personality.

This theory, however, may result in an uneven protection scale for intellectual creations depending on the magnitude of personality or self-expressiveness component involved in creative works. In other words, more personality-reflective works are granted a wider scope of protection while less amount of personal expression deserves less protection. Moreover, the theory seems insufficient in justifying industrial property rights which, in nature, contain less expression of the inventor's inner world.

2.4. Interim conclusion

To the extent we discussed mainstream theories that sought to explain the basis of the rights, one clear prospect emerges: each theory, somewhat, has shortcomings in explaining the intellectual properties which cluster a very wide range of subject matters and rights. With this said, it is necessary to note that utilitarian standpoint poses the most favored theory in this domain, furthermore, it proves the most relevant to the increasing economic and social importance of intellectual creations. Just as manifested by the utilitarian approach, the intellectual property regimes, in general, strives to strike an optimal balance between monopolistic control of the creator and public enjoyment of the

⁶ Depending on the substantive law or employment contract, the actual inventor may be entitled to a particular proportion of the revenue acquired out of the invention. One example may be given from Turkish law thusly; "The rate to be paid to public employees for their inventions shall not be less than one-third of total profit acquired out of the invention..." (6769 Turkish Industrial Property Code, Article 113/5).

creations so as to contribute social welfare. As far as the objective of promoting the creativity concerned, however, moral rights over the creation play a key role. As a matter of fact, those who invested their intellectual labor and effort would expect the final creation to be attributed to themselves; they would desire their creation's to be secure from any distortion or alteration; and finally, they would like to have control over the public circulation of their work. These matters are greatly linked to the intrinsic motivation of the creators specifically regarding inventive and artistic satisfaction acquired from the work. Said moral rights, however, have been paid very little attention by the jurisdiction where utilitarianism prevailed. Conversely, the majority of European copyright regimes, specifically French and German ones, have been strongly shaped by the writings of Kant and Hegel (Fisher, 2001). On this note, we are of opinion that the intellectual property rights may be most conveniently explained through a combination of utilitarianism and personality approach where the creators are not only incentivized but also provided with a series of moral rights aimed at promoting intrinsic motivation.

3. THE CREATIVITY PHENOMENON

As we pointed out earlier, historically, cognition of creativity has been hardly considered within legal the domain. Nevertheless, the ability of human-being to detect and to solve the problems, thus coming up with something creative, forms the essence of intellectual property laws. To this end, the importance of understanding the nature of creativity as part of legal scholarship cannot be overstated. Nevertheless, even in a psychologic context, creativity is deemed to a neglected research topic.⁷ With this being the case some scholars argue that intellectual property law remains moored in stereotypes of creativity that continue to influence the law (Weisberg, 2006; Mandel, 2010).

Psychologic studies suggest that creativity is based on at least two, and possibly three, main pillars. The first two elements are novelty and appropriateness (Mandel, 2010). Novelty, as is known, refers to newness of the work, thereby, reproducing an existing work or iteration of a conversant knowledge is not creative (Mandel, 2011). For a technological invention, appropriateness will often require functionality; for artistic expression, it may require the ability to keep the audience's attention or cause a powerful emotional effect. the audience's attention or cause a powerful emotional effect (Mandel 2011). The third potential element of the creativity suggested by some scholars is its rather heuristic characteristic than algorithmic.

Having the creativity described as the ability to produce works which are both novel and appropriate" (Kaufman & Sternberg, 2010), we intend to come to a cognition of creativity in the legal context, by drawing on following dichotomies; (i) Problem-finding and problem-solving in creativity; (ii) Creative moment – creative process; (iii) Collaboration in creativity; (iv) Intrinsic – extrinsic motivation. Additionally, throughout these discussions, we will seek to depicture the nuances between inventive and artistic creativity.

⁷ To explore this argument; See. Kaufman, JC & Sternberg, RJ, eds., 2010, *The Cambridge handbook of creativity*, Cambridge University Press.

3.1. Problem-finding and problem-solving

Among the psychologists scrutinizing the creativity, a great extent of consensus exists that the creative process involves a problem-finding phase which is followed by problem-solving. The primary step to take into this concept should, logically, be to comprehend what fashion of problem we are considering. The terminology of problem in our context, however, does not necessarily indicate a troublesome event. Quite the contrary, the existence of a problem is a must in order for any kind of creativity to emerge.

According to the “Problem Space Theory” of Allen Newell and Hebert Simon, a problem may arguably be defined as any sort of fact makes the current state (*start*) different than the idealized state (*goal*) (Newell & Hebert, 1972). Having this definition taken on, problem-finding and problem-solving would relatively simply refer to a dual-layer process of finding out what keeps a goal from happening and how to tackle it. Exporting this model to the creative process, problem-finding creativity is pertinent to identifying, generating or constructing (Reiter-Palmon, 2011) a new problem that was not previously discovered or recognized. Problem-solving creativity, on the other hand, concerns solving an identified problem (Mandel, 2011). Inherently, the nature of creativity in these two phases is likely to present dissimilarities. One may naturally think that problem finding creativity requires more of observation and attention so as to perceive a problem or gap in the field (Reiter-Palmon, 2011), whereas problem-solving tends to relate action-taking and labor-intensive part. Approvingly, psychologic researches suggest that these two types of creativity can involve different cognitive processes, concordantly, they may lead to different types of creative achievements (Mandel, 2011). More particularly, problem-finding usually associates with more abstract thought processes, while problem-solving can entail more analytical cognitive function (Sawyer, 2008).

Not surprisingly, problem-finding creativity has been deemed relevant to more intuitive artistic creativity whereas, the more algorithmic fashion of problem-solving creativity is associated with inventive creativity (Fromer, 2010). In the context of inventions, problem-finding and problem-solving stages of creativity fairly coincide with the nature of the work. Conversely, it is not quite easy to envisage what problem the artist seeks to discover and solve in order to be creative. The most credible stance suggests that the problem for the artist is to be sensitive to life experiences and to convert them into artworks with as fewer alteration from the original experience as possible (Getzels & Csikszentmihalyi, 1977). Additionally, the problem may be pertinent to selection of what artistic medium, materials and object will be employed in the expression as well as to making the feelings, ideas and expressions tillable in context of an artwork (Fromer, 2010).

Nevertheless, both identification or conceptualization of an undiscovered problem and finding out a unique and appropriate way to overcome a certain problem require a decent amount of domain knowledge. Clearly, it is not likely for someone to discover a gap in a field that they are not familiar to, nor they are able to tackle a readily identified problem in that field.

Problem-finding and problem-solving creativities do not necessarily exist simultaneously. In other words, there can be a creative solution to a known problem. Similarly, an already existing solution for a definite problem may happen to be the

answer to another problem which had not been originally discovered. Nevertheless, in order for the resulting work to be creative, either the problem-finding or problem-solving stage must inherently manifest a creative achievement (Mandel, 2011).

3.2. Creative moment - creative process

In order for a decent cognition of creativity, determining how it emerges is of crucial importance. The question “What form of creativity should be protected?” can be responded only when the moment of actualization of creativity is underpinned. There are two main theories sought to explain when creativity is completed; namely idealist theory and actionist theory.

Idealist theory suggests that creativity occurs on the ideal basis, thereby, at the very moment someone comes up with a creative idea, creative work is done. In this manner, the theory tends to disregard whether the creative idea is ever executed in physical form or anyone else is aware of it (Sawyer, 2011).

Actionist theory, on the other hand, argues that the execution of the ideas is principal in creativity. Accordingly, creativity occurs within a timeframe rather than a single moment. Once the plain idea subjects to execution with actual materials, it of then does not work out the way the creator initially desired (Sawyer, 2011). The original idea, therefore, gets modified throughout the execution process, hence, the original idea and the end product usually end up quite distinct (Sawyer, 2011). As a result of that, whether or not an idea is creative can be assessed only through the execution process.

Both theories may be, *prima facie*, seen credible, though, creativity research has found that the idealist theory is false; actionist theory is more relevant to explaining creativity (Sawyer, 2011). We also tend to favor actionist theory thusly; even the flash of insight, which may be perceived as creativity itself, both in problem finding and problem-solving is usually based on previous experiences, acquired knowledge and overall *savoir vivre*. Creative ideas may emerge as a flash of insight, nevertheless, appropriateness -as an element of creative qualification- could be known only when the idea is externalized. Apart from that, though, we need to point out that the moment of insight presents one -perhaps the most- important component of complex creative process. On that note well-known inventor, Nikola Tesla, in his diaries, mentions that the image of AC motor occurred to him like a flash of lightning one day when he was taking a walk in the park. However, it should be well considered that last 4 years up until that day, he racked his brain to visualize that motor, that is to say, even the flash of insight occurred upon 4 years of incubation period.

To sum up the relevance of these theories to the legal sphere, we are better off with revisiting what subject matters deserve intellectual property protection. Accordingly, copyrights tend to protect a specific and unique expression of the ideas but not the mere ideas. Other forms of IP rights, similarly, tend to protect the physically externalized ideas, given that the typical qualitative requirements (for instance, industrial applicability for patents) are met. Both expression and externalization requirements refer to the necessity of execution of ideas, hence, execution is a pre-condition for protectability. Moreover, plain ideas are never monopolized likewise moments of insight cannot be controlled, meaning, external factors -such as IP laws- are not likely to deter the individuals from having brilliant ideas, although, an unfavorable IP regime may well dissuade them from executing those creative ideas. On that note, we tend to propound

that a potential interaction between IP laws and promotion -or not demotion- of creativity may be better grounded on actionist creativity theory.

3.3. Creativity and collaboration

Theories of creativity were developed based mainly on individual works or small group settings. However, in contemporary creative sectors, both artistic contents and industrial products are of great complexity. As a result of that, one single inventive or artistic product, often, takes shape with the involvement of a variety of sub-works from different disciplines. A robotic surgery technology, for instance, requires the involvement of medical, pharmaceutical, engineering, physics, materials sciences and probably a lot more kinds of knowledge that we cannot address in the first instance. Such kind of advances in the sciences, likewise in the arts (movie industry is, for instance, pertains to literature, video and sound recording, photography, graphics, etc.) make multidisciplinary collaboration increasingly important. Evidently, that is because no single individual is likely to single-handedly possess all relevant knowledge (Mandel, 2011). Another significant benefit of collaboration becomes apparent when a sole individual artist or inventor intends to make commercial use of their work. As a matter of fact, the ability to invent or create art and commercializing or marketing this work are whole different stories. Accordingly, not every artist/inventor has to be good business people and often not likely to personally engage in business relations in the relevant market where their work may have commercial value. At this point, individual to business collaboration may emerge inevitably.

Research from a variety of disciplines makes clear that collaboration is a valuable driver of creative accomplishment (Mandel, 2010). Studies reveal that group collaboration can allow group members to build on each other's ideas thus enhancing individual and overall creativity (Mandel, 2011). Stating in other words, collaboration makes a way to enrichment of intellectual input insofar as each individual engaged in the collaboration will chip in with their own opinion, imagination, professional experience, fund of knowledge and, eventually, with their individual creativity. More intellectual input into the work is, on the other hand, logically likely to result in more creative output. As collaboration increases, thus scale of information input widens, the potential for access to, comparison of, and connection among differing information will also increase (Mandel, 2010). Additionally, intra-group competitiveness; identifying themselves with a project or with a group, thereby, feeling of having a share in group accomplishment may figure an extrinsic motivation. Consequently, we may thoroughly assert that collaboration has a series of positive impact over the creativity.

However, it is beyond realism to propound that collaboration is absolutely good. As some scholars argued, promoting large-scale collaboration in creativity presents a complex challenge (Mandel, 2011). First of all, large-scale collaboration, specifically regarding businesses and industrial entities, often requires institutional organization and even some sort of hierarchical set-up. This kind of structure though, not only limits the creator/inventor's autonomy in their respective work but also results in anonymity, hence, melting their individual creativity in collaborative creativity, intercepting individual attribution. Meanwhile, recent studies highlighted that the sense of autonomy per se can have an independent positive effect on learning and effort, and thus that intrinsic motivation and autonomy may cooperatively promote accomplishment (Mandel, 2011). Secondly, potential judgmental behavior within the group towards overtly

divergent ideas or fear of being criticized on that ground may result in lowered creativity. As R. Keith Sawyer pointed out, too many groups fall into groupthink, a state of lazy, shared consensus where no one wants to rock the boat (Sawyer, 2011). To this end, individuals may tend to remain in comfort-zone of the mutually agreed idea, so, lean more towards convergent thinking. Creativity usually emerges from the clash of different ideas however, collectivist creativity model contains the risk of group thinking, hindering divergent thinking. With both scenarios considered, we tend to think that the ideal collective creative process should be the one in which the individuals take their private process of thought simultaneously with the collaboration so as to not remain moored in groupthink.

3.4. Intrinsic – extrinsic motivation

Intrinsic motivation is the one emerging from the individual's self-interest, involvement and the pleasure found in the work/process itself. Intrinsic motivation, therefore, may be deemed to cause from inner world and very personality of the creator. Extrinsic motivation is, on the other hand, may be perceived as all other sorts of motivation, especially triggered by external factors (for instance, financial reward). Researches concerning psychological cognition of creativity highlight that intrinsically motivated work is more likely to produce more creative output than extrinsically motivated work (Mandel, 2011). Accordingly, psychologists emphasize that individuals are likely to be most creative when they feel motivated primarily by the interest, enjoyment, satisfaction, and challenge of the process per se and without external pressures (Fromer, 2010).

Overall, extrinsic motivations -such as financial reward, gaining recognition, competition in the domain- which do not stipulate organizational restrictions, content limitation or restrictive hierarchic structure, thus leaving room to the creator's competence, can synergistically enhance intrinsic motivation, while authoritarian extrinsic motivation may counteract intrinsic motivation, and can reduce creativity (Mandel, 2011). A similar pattern is also relevant to IP laws. In this regard, IP laws may be perceived as an extrinsic motivator which aims to increase intrinsic motivation, thereby, the creativity by rewarding creativity and novelty. Concordantly, one of the most significant tasks of IP laws, as an extrinsic motivator, should also be to convert the extrinsic motivation to intrinsic one.

4. CONCLUSION

The contemporary view makes it apparent that intellectual property rights today are more of business tools and commercial assets than a sophisticated form of property rights that are granted to the creators for their intellectual effort. This very point is also where the conventionally envisaged or publicly perceived figure of "inventor" or "artist" contradicts with the modern settings of creative businesses. Conventionally, more significantly in the Western cultural model, artists and inventors have been often pictured as highly individualist contrarian characters who usually reject collaboration and the mainstream patterns of thinking. Nevertheless, in the said business model, creative works are often carried out by the individuals or groups that work pursuant to an employment relation or other contractual connection. Revisiting the *Work for Hire Doctrine*, not those who accomplish the actual creative work under an employment relation but the employer

entities acquire the IP rights. Further, employment agreements both in private and public sectors are, almost with no exception, apt to stipulate IP right ownership clauses in favor of the employing entity. To this end, such a common logic as “whoever puts the intellectual effort owns the rights” remains inadequate to correlate today’s business facts with *raison d’être* of intellectual property rights. Same business settings inherently require an internal organization, and a level of hierarchy, furthermore it predefines the area in which the individuals are expected to be creative. As a result, in the context of creative productivity at business level, a delimited creativity model seems to exist.

In the very generic form, creativity is the ability to come up with something novel and appropriate. It should be, however, born in mind that even in the definition of creativity countless subjective factors become determinative such as culture, history, intrinsic motives. Different aspects of creativity that we dually discussed above reveals; it is way too relativistic and very much dependent on the context in which it is embraced. Beyond the scholarly scrutiny of the whole ideation, it needs to be admitted that the public perception and the discretion of the audience plays a crucial role in determining what really is creative. Furthermore, even at the level of psychological science, a literal definition –let alone a certain universal anatomy- has not been and not likely to be agreed upon. With this being the case, we may suggest, creativity is of a compound above-stated dichotomies, with different compositions accorded to the context in question and it certainly is not monotone. However, the law has to be objective and predictable, to this end, we may argue that the legal understanding of the creativity -which should subject to an IPR- is pretty much about making an objectively applicable implication of highly subjective term of “creativity”.

If we are to deduce from this definition and test novelty and appropriateness on the copyright and patent requirements, we can suggest;

(i) The “newness/novelty” component of creativity identically qualifies a universally accepted patentability criterion. Meanwhile, it is linked to “originality” requirement in the context of copyrights.

(ii) The “appropriateness” component of creativity may be considered as a combination of “functionality” and “industrial applicability” in terms of patentability. Whereas, as regards to copyright, it may refer to “being able to expressed in a tangible form.”

Additionally, despite the fact that the breadth of this study covered inventive and artistic aspects of creativity thus patent and copyright in this connection, it is worth pausing to address trademarks briefly in the same context. In doing so, it is of primary importance to distinguish the nature of trademarks from patent and copyrights. More precisely, the works and inventions comprising the subject matter of patent and copyright protection may be created in pursuant to self-interest or with commercial purposes, whereas commercial attributions underlie the very existence of trademarks. Hence, creative quality of trademarks has to be regarded in line with this specific commercial purpose.

Accordingly, the primary and most significant quality expected from a sign is its distinctive character. Both elements of creativity, namely novelty and appropriateness, in this connection is embedded in distinctiveness. As the primary function in this realm is to exhibit the otherness, the sign has logically to be novel, at least dissimilar to the its competitors. Secondly, and being again founded on its functioning, appropriateness may

be measured by distinctiveness the marks can provide. Thus, appropriateness is achieved when the sign in question is thoroughly capable of distinguishing the origin of the goods or services of one origin from those of others. Additionally, appropriateness as regards to trademarks is also greatly associated to the formal specifications of the signs (e.g. symbols, three-dimensional features, packaging, sounds or fragrances, or color shades).

Another discussion concerns whether creativity is conceived as a monotype phenomenon through the lenses of intellectual property law. Although there exists the view that intellectual property laws do not recognize the difference in the nature of inventive and artistic creativity, we tend to think that intellectual property laws do not remain fully indifferent to this distinction. Taking a look back at the earlier discussions, it is clear that artistic works more pertinent to intrinsic motivations, thus, they are in closer touch with the inner world, emotional state and very personality of the content creator. They also usually associate with problem-finding creativity, source of which resides in life experiences, happiness, sorrow and a whole range of feelings and ideas of the artists. Not coincidentally, these moral elements of artistic works have been kept in sight by copyright laws at the level of moral rights. Inventive works, on the other hand, are likely to require greater financial and infrastructural investments in addition to intellectual labor. Most of the times inventions come along after long and arduous processes with number of trials and errors. That prospect may be the logic behind why intellectual property laws originally are in the tendency to promote the artistic creativeness not only by some financially valuable exclusivities but also by moral motivators such as right for attribution and right of integrity. It cannot be overstated that those who are motivated by their self-interest in the work, enjoyment, satisfaction, and challenge of the process per se – namely intrinsically motivated individuals- are likely to be more creative than those who are triggered by extrinsic motivators. Nonetheless, non-restrictive extrinsic motivators may synergistically strengthen intrinsic motivation. IP laws, therefore, figure a significant extrinsic motivator which is aimed at promoting intrinsic motivation, thus creativity.

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