

Intellectual Property Rights and Creative Heritages

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1 Introduction: some property rights on creative goods and creative heritages ?

In the sixties, the French grand couturier Yves Saint-Laurent presented a cloth collection called “Mondrian”. He openly drew his inspiration from famous Dutch painter’s works. From this anecdote derive many questions, all linked to Intellectual Property Rights (IPR). For instance, was Saint-Laurent entitled to use Mondrian’s paintings as a source of inspiration without caring of IPR existing on Mondrian’s canvas, and consequently paying him or his heirs royalties? Plus, could the grand couturier argue that Mondrian’s paintings were a part of human heritage and so are free goods? Speaking of “heritage” implies to define the part of the creation of Mondrian that really constitutes heritage. Is it only his style of painting? Colors of his creations? Etc. In order to complicate this story, a few weeks later, street fashion produced for ready-to-wear market lower quality clothes inspired by the Mondrian collection of Saint-Laurent. One can ask whether producers were authorized to propose a collection “very close” to Saint-Laurent creations. By the fact, did Saint Laurent’s creations become heritages that street fashion could use as source of inspiration as Saint Laurent did for Mondrian’s paintings?

The case of YSL is not trivial and is more widely linked to the nature of haute couture, painting or fashion for instance. Another industry encounters same difficulties: the French “Grande Cuisine”. Paul Bocuse created, in the seventies, the VGE truffle soup (Valéry Giscard d’Estaing was the French President). Is anyone entitled to put on his menu a VGE truffle soup? Or to put a similar truffle soup, called Britney Spears truffle soup? Is the VGE truffle soup a piece of a private heritage or of a common heritage?

All these goods are cultural and creativity-based goods. In contemporaneous societies, these goods (fashion, luxury, design-based goods, gastronomy, etc.) contribute increasingly to economic growth. According to authors, this rising weight can be related either to the development of creativity paradigm (Caves, 2000; Towse, 2001), or to the emergence of intellectual capitalism (Grandstand, 2000), or to the growing importance of semiotic products (Barrère and Santagata, 1998).

Goods based on creativity generally avoid time obsolescence as far as they escape from the killing effect of incremental technical progress (Santagata, 1998) according either to quality, or to productivity. Moreover, many of them have long term effects and, then, they constitute heritages that enter as general inputs in the production of new creativity-based goods.

An important question is that of rules and institutions, namely Property Rights (PR), that could manage these creative heritages (CH). As public goods most of the time they are in free access; consequently property rights are often “less defined” (Papandreou, 1997). As far as efficiency and equity are concerned, economic consequences of the lack of consistency of these property rights are of a great importance and rarely studied. Significant changes have occurred last years and many economic actors assert their claims to the protection of creation and, specifically, of CH. At the same time, financial groups (in particular groups of the new luxury industry) seek to control or to buy heritages of which potential value is high. Therefore, it is interesting, for economic analysis and for

economic policies, to highlight the consequences of the lack of clear and complete enforced rules. It is not a new issue. Yesterday, we could see systematic policies to manage creative heritages: Venice was, simultaneously, organizing piracy on existing heritages and secret for Venetian creations.

Being creativity-based fields Haute Couture and gastronomy constitute interesting examples of this new type of production process. Using these two illustrations allows to underline the extreme heterogeneity of CH and to compare the issues. This paper aims to understand why creativity-based goods make it difficult to implement IPR on their heritages. The paper proposes an answer linked to the difficulties of applying existing IPR to so specific goods. It is organized as follows. The section two analyses the heritages of two specific industries, French Haute Couture and gastronomy. The third one aims to show the difficulty to apply existing IPR to CH. The sections 4 and 5 are concerned with the management of PRs in these cases. Section 6 gives some more general conclusions on IPR related to CH.

2 The specificities of creative goods and creative heritages

2.1. The paradigm of the creation

Creativity theories cut with the idea of homogeneous inputs, mainly for labour, and insist on the specificity of creative labour, and conceive creation as escaping from the principle of a progress trend. The notion of creation firstly was used for cultural products and especially for arts. It enounces several properties introduced in these productions by the creativity (obviously, when goods are not pure creative goods, these properties are only partially observed):

- ***Non-reproducibility.*** While production by transformation of inputs is an operation which can be infinitely repeated, by the productive consumption of necessary inputs, creation appears as a particular phenomenon, founded on such a radical singularity that we cannot have a similar result by buying other inputs. The paintings of Picasso are behind us and, now, we can only have copies or “in the touch of Picasso” paintings; we will never again have some original Picasso’s paintings and this, whatever the consumption of inputs will be.
- ***Non-comparability.*** For purely creative goods, i.e. singular creative goods, without technological dimension, literature or painting for instance, some opuses are incomparable and there are no scales of values for them according to quality. A Mozart concerto is not a Miles Davis composition, a Picasso’s painting is not a Poussin’s one, and Borobudur is not Chambord or the Empire state building. It would be a non sense to rank these opuses according to a quality or a creative scale (is the invention of perspective superior to the Impressionism or Cubism innovation?).
- ***Durability and non-incrementality.*** Frequently creation has long term effects. The main religions have their roots in very old times. While technical objects disappear, the more recent supplanting the former, the purely creative good establishes a final result. It is not substituted by a new, better, powerful good: « Scientific and technical knowledge are cumulative. They add up. Conversely, what does represent a progress when considering Homer and Sophocles, or Plato or Dante? Which play can surpass Hamlet? Which roman can surpass Madame Bovary or Moby Dick? » (Steiner, 2001). Singularity and incomparability of creative goods are opposed to the idea of an incremental development of science and technology.
- ***Idiosyncrasy.*** In the creation world, creativity is the main input. Even if the other inputs are the most valuable (the Stradivarius violin of a soloist, the caviar of a chef’s recipe), the result depends mainly on the creativity because a creative producer would obtain a very different result compared to a non creative one. Therefore the relation between the owner of the main input (the creator) and other elements of creative process is idiosyncratic. The specificity of

creation is analysed through the image of God's creation. On the same way, the creation of the artist or of the fashion stylist is made out of nothing, or out of economic resource, or out of input, except the singular and no standard resource, genius, creativity, inspiration, illumination. Modern times spread the idea of a creation from God to Humanity.

- ***No principle of "economization"***. The specificity of creation is analysed through the image of God's creation. The creation of the artist or of the fashion stylist is made out of nothing, or out of economic resource, or out of input, except the singular and no standard resource, genius, creativity, inspiration, illumination. Modern times spread the idea of creation from God to Humanity, so the idea of economy of means, i.e. research of productivity, has no sense in the world of creation. What stake is it for social development that the Messiah of Haendel has been composed within a week, a month or a year?

2.2. The constitution of creative heritages

Creativity-based goods heritages are together inputs and outputs¹. Moreover they are not the unique form of creative heritages (CH). Fashion goods are produced with creative knowledge, in a cultural and social framework which contributes to define tastes and preferences ("le bon goût") and build reputation heritages. These specific heritages influence individual and social preferences, and consequently demand functions insofar as producers can generate demand for these goods through communication strategies. For instance, demand for Dior perfumes is linked not only to the image of the great Haute Couture creator, but also to the "French touch" and to the Parisian heritage of fashion, art and culture. In the same set of ideas, demand for French restaurants in New York or Tokyo depends on the reputation effect of the French cuisine heritage. Some authors (for instance Rochefort, 2001) show that consumers have an increasing demand of heritage, interpreted as a demand for stability. They want to connect themselves to their traditions, their history, they seek their "roots". Then, creative knowledge, reputation, determination of tastes, transmission of the past also are parts of the creative heritages. Lastly, close to creative heritages is a craft knowledge heritage, which increases the value of individual skills and allows creative production. We now use the general notion of creative heritages (CH) to include all these types of heritages among which we can distinguish the two main components of creativity-based goods heritages – strictly speaking goods, models, designs, dishes, recipes,... and of creative intangible heritages – reputation, knowledge, know-how, ...

2.3. The economic consequences of creative heritages

Creative heritages have great effects on social wealth and then they need an efficient management. We can distinguish creative heritages effects on new creation and effects on consumption:

- ***On the production***. Scientific and technical knowledge is a cumulative process; every scientific theory is absorbed in a new version of the theory, more sophisticated, more rigorous, a better one. As inputs, they are used to be modified upwards. On the contrary, creative heritages are constituted of creative goods and intangible assets which have not been substituted by new and better types, for creation world is not characterized by a progress-oriented path. They can be used as inputs for a new creation, but these inputs are specific because they do not disappear in the creation process, contrarily to standard inputs the value of which is entirely absorbed (through time as for capital) in the output. As information goods, the use of these inputs does not consume them. For that reason they have a very great social value.

The productive effects of heritages take place in the space (they frequently appear under the form of cultural districts) and as time goes by; gastronomy and fashion will illustrate this point, which is more spectacular in arts. Heritages help new creators. Art is not only produced by the classic inputs of labour, capital and commodities: it is also "produced" by other signs,

¹ As homage to Sraffa, one could say that a production of creativity-based goods by means of creativity-based goods and a production of creative heritages by means of creative heritages.

representations, emotions and so on, all participating in the social context. For creation, the creator uses inspiration coming from other creative products, from societal atmosphere and from creation history.

- ***On the consumption.*** Three main effects can be noted. The first one is that creative heritages escape obsolescence, so their “consumption”, mainly that of creative goods heritages, can be unceasingly renewed. For centuries Notre Dame de Paris has been visited, Hamlet has been played, and it will go on for a long time in the future. The second effect is that creative heritages have some properties of public goods. There is no rivalry between consumers. The third effect is that creative heritages, mainly intangible heritages, influence the individual preferences and the functions of demand. In the creativity-based goods area, the changes in the demand for goods are usually related to changes in the preferences and not to changes in prices. The creativity field is a field in which we cannot say “De gustibus non est disputandum”.

Then, it seems very important to obtain a strict management of creative resources which are very scarce and the value of which is very high. But they are not standard resources and standard rules on PR cannot be directly applied.

3 Why creativity makes it difficult to implement IPR on creative heritages?

By defining a clear rights holder for each economic resource, the PR system allows to manage efficiently –including inter-temporal management– the use of the resources because the holders completely benefit from their fructus. It also allows allocating, through abusum, the resources towards their most efficient uses. This implies a well defined system of PRs, which specifies the monopoly perimeter of the resource uses that the holder of the PR can make, and, conversely, all the uses prohibited for other people. A perfectly defined PR would be a clear definition of all the uses that the titular is empowered to make in every state of nature (Barrère, 2004): each action on each resource is entitled to the right of someone without any discussion and with all the consequences of these actions in any state of nature. A perfect PR model is strictly related to the standard paradigm of the production function; we *can* define PRs on the inputs because: we can identify all the inputs, these inputs are clearly defined as homogeneous ones and are separable, we know the relation between each input (or the marginal quantity of input) and the output, this relation is stable and reproducible, and we can measure the value of the output. Therefore the value of the output can be distributed between the contributions of each input, so every separable input has a value and every PR has also a value. Each resource is entitled and each PR has a value, the value of the highest value among values of the actions entitled by the PR on the resource. Then each input is clearly linked to a PR and PRs are not overlapping. These PRs can produce efficiency. In a function of production framework, this value of PR is related to the productivity of the resource, so an efficient market can emerge. And, according to economic theory, we *must* define PRs on the inputs for efficiency improvement.

Three main types of problems concern PRs on creative goods and then on creative heritages:

3.1. An entitlement problem

To define property rights the first problem is to identify all the resources which can constitute heritages (having today creative effects or only able to have tomorrow some effects), all the producers of the resources which constitute creative heritages, to separate their contributions, to share rights between them so as to give each one exclusive right and power on the effect of his creative contribution. As already noted creators enlarge creative heritages by their skill but also by using previous creations and cultural heritages, according to the properties of durability and non

incrementality of creation, so the identification and the sharing of the relations effect – resource – titular is often problematic.

3.2. Transfer problems

To define PR able to be transferred by a market process resources have to be valued. Three difficulties are now emerging :

Evaluating the uses effects of creative resources. Four main difficulties arise:

- (i) Creative labour effects overflow particular products. It is difficult to know which effects a creation would be able to produce over the space and, a fortiori, through time.
- (ii) As creative heritages have a public character, the different values of their uses have to be added and the list of their effects can be never closed because some new effects may later appear.
- (iii) The most important creations often are “avant-garde” creations and are in opposition to the present environment. The creator is not recognized as a remarkable man or woman and his (or her) opus only later obtains value. And, even if the creator is recognized (as Titian, Picasso or Mozart), how to measure in money his or her contribution? And how to distinguish the painting value (the canvas) and the value for the development of art? What is the value of the invention of the “perspective” or the invention of cinema? It is as far difficult as many of the effects are non market effects. Another point is that the individual appreciations and then the creation social appreciation are very inconstant and unpredictable. If it is not very important for “small” creations (the Philippe Stark’s lemon squeezer, the post-it), it is different for “great” ones (Cubism) because the appreciation depends on the representations new creation contradicts. This makes the value of effects a very random value.
- (iv) Creativity has also effects on consumption by offering new goods and by influencing individual preferences. It does not correspond to an alignment on individual preferences but, more, to a production of new goods, unknown by consumers, and new desires. What procedure can produce a rational or a reasonable evaluation of such an effect, and capitalize this effect over time?

These difficulties are mainly linked to the durability and the non incrementality of creations and to their non reproducibility and non comparability which give them a singularity.

To infer value of the resource uses from the value of their effects.

Durability and non incrementality of creations lead to some more difficulties.

Firstly, it is very difficult to separate the productive contributions of each input: is the goal of Raul the effect of Raul’s efforts and genius or, also, and up to what limit, the effect of Zidane and Ronaldo’s contributions?

Secondly, the effect frequently depends on a creative labour and on a heritage effect. How to share the new value between direct creative work and heritages? Heritages are not standard inputs, the value of which is given by the market. Monet's painting "Impression soleil levant" is also the product of a social environment, which is not a purchasable input. And, if the creator produces thanks to a social heritage, a production function including this heritage, to evaluate a marginal productivity, is impossible to conceive. Picasso learnt how to paint and found inspiration with the paintings of Poussin, Ingres, Puvis de Chavannes or Cézanne, but a bigger use of “Ingres input” would not induce a growth of his production or of its quality.

To give the resource a value.

The idiosyncrasy which characterises creative goods and heritages generates new problems.

In a creative process, some inputs are singular, specific, idiosyncratic (the talent of Maria Callas, John Galliano, Alain Ducasse, Pelé or Picasso), so their potential market is a very small one and does not constitute an appropriate reference.

The working of creative inputs is not a standard one, so the relation between resources and value of their effects is frequently indeterminate. As a difference to the production function, the

technological combination is unknown: Yves Saint-Laurent declared that, in the morning, he is dreaming in his office, and suddenly an idea is coming; then he takes a pen and makes the draft of a cloth. John Galliano goes to his office after nights in discotheques when he has a “flash”, summons his assistants, tells his visions, and they start working.

Finally, the creation operation is not reproducible; its result can vary according to environment or randomly. With the same inputs, we sometimes obtain a genius product and sometimes a bad product; Maria Callas’s performances were not the same everyday.

3.3. An enforcement problem

The third problem is to enforce definition, entitlement and transfer of PR. As in the case of the Mondrian dress created by Yves Saint Laurent this may be difficult. Piracy and opportunistic behaviours result from difficulties to identify resources, to entitle them to define exclusive rights.

In some creative cases the relation resource-value effects is not problematic and the entitlement of resources is enough to define the relation holder-uses of resource (PRs on perfumes are well defined).

In some others the relation is more difficult to define and to value but the effects remain in the private area. Great fashion creators benefit from their creative image a capital of reputation and symbolic power. Private heritages are then constituted. They irrigate many other goods as perfumes, luxury goods, and trademarks can capture their main economic consequences. Firms have a patents portfolio or brands portfolio and can manage them by selling, licensing them...

In last cases, the effects overflow on the public field, as in paintings or in science. Some creative products are systematically put in the common pot. Last century, who was more creative than Einstein? But Einstein earned no money for his main theoretical inventions, although some of them were a condition for posterior innovations and industrial applications which conduced to patents. And between private and common heritages, there is a large field of less defined heritages, as the examples quoted supra witness it.

4 The development of creative heritages in two industries

4.1. Creative industries

Our study is based on two case studies, the French gastronomy (Chossat, 2001; Chossat and Gergaud, 2003) and the “Haute Couture” industry (Barrère and Santagata, 2003).

Both are creative industries. Gastronomy is a moving discipline. Producers integrate regularly new ways of production, new ideas, new recipes, and new flavour combinations in order to renew gastronomic practice. In fact, it evolves with impulses given by the French leading chefs, that is the symbolic meaning they want to give to their production. For instance, in the seventies some chefs united behind the “nouvelle cuisine” paradigm as classical musicians or even cubist painters did at the beginning of the 20th century in order to alter the quality rules of their discipline and thus to change the symbolic meaning of musical and painting creation.

French Haute Couture is obviously organized around creativity, the key input. Models and designs are not a standard production but a singular one, giving singular works, strictly connected to individual talent. They avoid the incremental character of technical progress. In the fashion industry there can be some innovations and technical progress. Then, there can be incrementality but it is not the dominant characteristic. The principle of fashion is precisely that someone can prefer the fashion of the sixties to the fashion of the seventies but nobody can maintain that one is technically superior to the other.

Both have a path development that can be broken up into three periods and oriented by strong heritages (see Table 1). They include goods heritages (creativity based goods heritages) and no goods heritages (creative intangible heritages). Hence, the most valuable heritages are, as we below see it,

creative intangible heritages that explain the difficulty to define PRs on. Private heritages, as ownership of the firm, the chef or the creator, are opposed to common heritages.

Table 1- the three ages of haute couture and gastronomy

	Characteristics for haute couture and gastronomy	Consequences for the definition of IPR
1- the aristocratic age	Eating and dressing depend on social orders (Clergy, noblesse, commonalty). It is the age of qualified craftsmen and of a strong common heritage of craft knowledge.	The lack of well-defined PR is not important
2- the elitist age	The time of dress creator and of grand cuisinier creator. They define styles, conventions, etc. In their specific area, they constitute the most important source of common and private heritages.	Importance of well-identified creators. Beginnings of protection by the IPR apparatus for HC. G ^y is backward, because of problems to be recognized as a creative and intellectual discipline.
3- the market age	Haute couture and gastronomy as creative industries are managed by luxury groups, or hotels channels. It explains the economic logic (efficiency and economization) that governs now these 2 industries and the tendency to use heritages as economic resources with a high value on the market.	Creation is still now the main input of these industries, but managing made by portfolios so intensification of rights entitlement, of rights transfer and of enforcement problems.

In the fashion industry we can distinguish three ages (Barrère and Santagata, 2003). In the first age, the aristocratic age, clothes are different according to social orders (Clergy, Noblesse, and commonalty). Fashion is only for aristocracy and, within aristocracy, it highlights hierarchy. It is organized by the “etiquette de la Cour”. Producers of fashion are high qualified craftsmen and social distinction is mainly indicated by the more or less costly character of materials (satin, velvet, silk, embroidery, fur,..) and the more or less sophistication of the work. The creative heritage is mainly a common heritage resulting from social conventions (the red colour as a manifestation of luxury), from the history of culture and arts (an echo to Greek or Latin sculptures), from the technical skill of craftsmen. Then the lack of well defined PR is unimportant.

In the second age, an elitist age, the “dress-creator” (le “couturier-créateur”) appears with Charles Worth. The couturier becomes a creator and defines the styles, the models, and the fashion convention. Therefore, great creators (from Worth to Saint-Laurent via Poiret, Chanel, Dior...) are the most important sources of the Haute Couture heritages; secondly all the people working in the Parisian fashion district participate to the construction of this industrial heritage under the leadership of great creators. Some intellectual property rights appear, but they are strictly connected to the person of the couturier-créateur and cannot be managed by a market procedure, but only within the firm.

Now, the French fashion system is going to a new model, a market model of fashion. In this new model, the aristocratic “Maisons de couture” are included in large financial groups (Arnault –LVMH– and Pinault –PPR– are the main ones), working in every compartment of the luxury industry. These groups manage old heritages, which are no longer related to the present creators (Galliano, Tom Ford...). They extend their heritages by extending the area of creation (mainly in the accessories) and by investing in brand image and reputation. They buy and sell brands. The question of definition and entitlement of IPR on heritages and the question of they transfer and market allocation become of a great importance.

As observed in the table 1, three ages characterize also gastronomy . First, from the Ancien Régime to the French gastronomy golden age creativity was not in force. Recipe books enounced the gastronomic settlements and experimenting new ways of cooking was absolutely not possible. The second age began in the sixties of the 20th century with the Nouvelle Cuisine movement. This new way of cooking was boosted by chefs as Paul Bocuse or Michel Guérard, who integrated in the Nouvelle Cuisine paradigm a creative dimension. For the last age, in force since the 1990's creativity is still the key word, but the management of gastronomic goods has changed. Luxury industries issues have been introduced in the gastronomic field. Chefs are more and more managers. By using among others their heritage of reputation, they develop their activity out of their kitchen. For instance, they open middle class restaurants or other top restaurants sometimes in foreign countries; they are hired by luxury hotel channels as consultants, they write recipe books, they perform regular TV programs, they collaborate with agro industrial groups to sell ready-made meals, and so on. Actually, this new type of issues encouraged luxury groups to invest in French gastronomy and especially to hire high marked chefs for the restaurants of their luxury hotels (George V or Crillon in Paris which restaurants are rated now with 2 stars in the Michelin guidebook).

From the IPR standpoint, the two last periods are the more interesting because the existence of creativity during them require the implementation of a protection for goods and heritages. Heritages can be of two sorts: private or common.

4.2. Private heritages

Private heritages are constituted by four elements:

- 1 A heritage of craft knowledge, within the “Maisons de Haute Couture” or the “Grands Restaurants”. It is transmitted through generations of workers and gives them a technical skill to execute sophisticated technical operations.
- 2 A heritage of creative knowledge. The history of the Maison and of the great creator (Chanel, Balenciaga, Dior, Saint-Laurent...) and the cult of creation are an important incentive to creativity. Stock effect, memory effect and experience effect facilitate the training and the transmission of creativity, especially between generations. In gastronomy, there is also an history of “Grands Restaurants” narrowly linked to the legend of grands chefs as Dumaine, Point or Ducasse who entered in the Pantheon of gastronomy by transmitting to new generations of cooks their creative knowledge.
- 3 A heritage of creative products. In the fashion industry it constitutes on a side a physical stock of designs and models and on the other side the cultural heritage of a style (the Chanel style for instance). It has a great value because new creators can “revisit” old collections and styles, but, also, because it allows identification by customers. The gastronomic industry is in a near situation. Chefs have a huge stock of recipes. They can insert creativity in their courses by “revisiting” old recipes. So, heritage plays a key role as an inspiration source, a source of production and of contemporaneous creativity.
- 4 A heritage of reputation. The names of the “grands cuisiniers” and of the “grands couturiers” are well known, in large areas which surpass the direct patronage, and, often, through generations.

4.3. Common heritages

The common heritages content is multiple:

- 1 A common heritage of craft knowledge. It is the case within the French – and more strictly the Parisian – fashion district. When Christian Lacroix opens his couture house, in 1986,

he needs high qualified workers and can deal with high specialized workshops of pearls and embroideries, to buttons, trimmings, craft textiles manufacturers (Laver, 1995). In gastronomy, to become first class chefs, cooks have to lean their production on top teams of suppliers offering the best products (meat, butter, vegetable, etc.).

- 2 A common heritage of creative knowledge. This heritage implies experience effects. Yves Saint-Laurent, twenty-one years old, succeeded to Christian Dior, when he died, and his first collection – the Trapeze line–, which was very observed by the critics, demonstrated a great culture and a capacity to fit into the fashion course. In England, the success of Vivienne Westwood or John Galiano is linked to the tradition of English tailors (Lehnert, 2000). The creative heritage is also the ability to conceive new goods, closed to Haute Couture, luxury goods, and to widen their product range. In gastronomy, there is a long guilds tradition of which conventions impose to cooks in order to learn their job to become “journeymen”. Travels allow cooks to exchange their experiences and so their creative knowledge.
- 3 A common heritage of styles. It seems obvious that gastronomy belongs to the French heritage insofar as this activity is deeply rooted in the French identity (burgher cooking style, regional cooking, etc.). Indeed, numbers of foreign tourists come to France in order to visit its most famous restaurants; and in the same time, French restaurants located in foreign countries attract many lovers of French way of life. From that angle, gastronomy can be analysed as a French specificity leading to improve the situation of the French tourism branch and to include, as other cultural goods, many pecuniary externalities: for the museums visits –Louvre, Orsay museums–, for hotels booking, for wine testing and sales, for “terroir” products –truffles, snails, etc. –, and so on. Undoubtedly, gastronomy contributes not only to alter, but also to increase demand for numerous related fields. In the Haute Couture industry, the key word of creation is now “to revisit” fashion history. Old styles are the basis for new variations. Today, fashion is an echo to the seventies style, tomorrow, it may be an echo to the forties, and so on. Ralph Lauren and Calvin Klein have been inspired by the English aristocratic fashion and, for casual and sportswear, by the American pioneers’ style.
- 4 A common heritage of tastes, i.e. a semiotic heritage. Fashion and gastronomy imply conventions to distinguish between nice and bad taste. The existence of a heritage of tastes and preferences, i.e. a common reading of signs, produces homogeneous representations. In a market of sign-goods as the fashion or the gastronomic market, it allows the adaptation of demand to supply. It makes fashion and gastronomic courses understandable; it makes creation credible; it legitimates the creative work as fashion creation or as gastronomic creation. Moreover, it gives a competitive advantage in world markets. The semiotic heritage conduces to an image heritage. All the French goods of luxury industries profit from this image effect. French fashion and luxury products (as gastronomic ones) are expected by consumers as carriers of the French touch.
- 5 An institutional heritage. The French institutional heritage of Haute Couture includes public policies to improve art, fashion and creativity, trade associations, and mainly the institutional form of the Maison de Haute Couture. Fashion industry is organized as a pyramid with the Maisons de Haute Couture and their artistic creator at the top. They have the key place which means that creativity plays the key role too. Therefore, incentive to creativity is growing. Regarding now gastronomy, it seems clear that an institutional heritage can be invoked. Actually, the gastronomic market extent is defined by experts. In fact, for almost a century, French restaurants are institutionalised as gastronomic ones by guidebooks selection (Michelin, Gault-Millau, etc.). Even if these experts use secret criteria (Chossat and Gergaud, 2003), creativity seems to play a significant role in the chefs selection. Economic consequences of selection are so important for restaurants that chefs have to mix creativity and tradition in their recipes to be selected.

- 6 Fashion industry and mainly Haute Couture uses cultural heritage as a background for creation. Sometimes, the influence of artistic heritage is very direct; for instance when Saint-Laurent creates his Mondrian collection or when Lagerfeld is inspired by Watteau for new models, among which the famous costume of the White Pierrot. Moreover, a creative district emerges which allows the circulation of innovation between arts and emulates creativity. Local creation can also resort to other cultural heritages. Issey Miyake uses his Japanese culture to work on pleated textiles, invented by Fortuny, but now developed with synthetic substances and is influenced by origami and samurais' armours. Gastronomic creation can be analysed from the cultural districts point of view. As other cultural districts, gastronomic districts, that are regional or local ways of cooking, determine to a large extent the way to perform courses, to associate flavours, to combine textures, and so on. To become a first class cook, chefs have to take into account their restaurant location. It implies to propose a menu with a "bouillabaisse" course in Marseille and with a "choucroute" course in Alsace.

As private heritages they clearly are creative heritages. Table 2 sums up the different kinds of heritages in force in haute couture and gastronomy.

Table 2. The forms of heritages in Haute Couture and gastronomy

	Private heritages	Common heritages
Craft knowledge	With "Maisons de haute couture" or "Grands restaurants". Craft knowledge is transmitted through generations of workers; gives them a technical skill to execute sophisticated technical operations.	Creation of fashion and French gastronomic district. Importance of high quality suppliers and of top teams to issue high class products.
Creative knowledge	Development of the Cult of creation, importance of the creator's identity. Construction of stock, memory and experience effects	Long tradition of English or French tailors and of journeymen for gastronomy. Experience effects, tradition of creation.
Creative products	the specific style of a tailor or of a chef. A physical stock of designs, models or recipes. specifically a cultural heritage of a style recognizable by consumers.	X
Reputation	Chefs or couturiers' names are well-known beyond the limits of their trade	
Institutional	X	Reputation of these markets are the result of an institutional heritage. A frame of specific rules for creations: "Maisons de Haute Couture" and experts selection for gastronomy.
styles		French styles of dressing and cooking are rooted in the French identity. They determine the way to create nowadays (i.e. revisiting the classics).

tastes	A common reading of signs. Homogeneous representations thanks to existing conventions. It is an advantage in a world market, because gastronomy and HC benefit from the image heritage of French luxury products.
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The existence and the forms of IPRs on heritages determine the profits produced by the capitalized value of heritages (fructus), the value created by the use of heritages (usus), the exchange value of heritages (abusus), and the conditions of the protection and the reproduction of the value of these heritages.

5 IPR and management of creative heritages in the gastronomy field

As proposed above, a distinction has to be done between private and common heritages.

5.1. IPRs on private heritages

The nature of the good considered will determine the IPR protection apparatus required. For industrial goods, patents, trademarks or trade secrets will usually be utilized whereas for artistic works, copyrights or author's rights (according to the country considered) will be implemented. Thus, observing the different devices, it seems clear that *grands chefs* can use them in specific circumstances.

The use of industrial IPRs

When heritage goods result from an industrial process of production, the intellectual property devices potentially applied are patents when they are grounded on novelty and innovation; they can be substituted by trade secrets. The heritage goods of which originality is the result of their location or of their name but not necessarily from an innovating process are protected by trademarks. It is actually enlarged to the case of quality labels (e.g. in the European Community there are *IGP* or *AOP*, and especially in France *AOC* or *Labels Rouges*). These devices implemented by public policies give an institutional and collective identity –a sort of “*tradenname*”– to particular heritage goods linked to soil (wine, cheese, poultry and so on).

From the patent point of view, heritage goods resulting from an inventive industrial process take both direct and indirect advantages of being patented. Direct because being in a monopoly situation allows the patent holder to get monopoly rents and to collect all the demand expenses for the good. And further indirect because being the first and only producer of a good at the beginning of the market allows also him to remain “the best” in the consumer's mind in the future time when the patent will be ended, that is when competition will occur in the market place. Furthermore, patents by generating a kind of lock-in phenomenon (David 1985; Arthur 1989) build up networks externalities in reference to the value of a good that is related to the number of its users. Although related generally to technology, network externalities may refer to the fact that demand is oriented to a specific kind of good and determines a conspicuous consumption with bandwagon effects in a cultural demand scheme. Cooks are economic producers who may develop industrial innovations (i.e. creative methods) and then take out patents. Just consider, by way of illustration, the cases of Georges Pralus, the inventor of the *under-vacuum cooking* and of Joël Robuchon, who intervened in the *low-temperature cooking* conception. Although significant these examples of the chefs' innovating activity are more and more exceptional in the gastronomic market. The increasing complexity of techniques to master that needs most of the time engineer knowledge reduces the chefs' possibilities. So, the effect

of enforced rules aiming at the innovation protection would only be marginal on the chefs' innovating propensity.

Trademark protection is not originated in an incentive for innovation or creativity. As told by Besen and Raskind (1991), the trademarks function consists in identifying producers and differentiating products. The information improvement for consumers is significant insofar as the visibility of the labelled products is notably increased for both consumers and producers. As a matter of fact, producers who get information from this device become able to increase the quality of their products in order to join the labelled producers. Chefs' trademarks are well-known from consumers. Indeed, identifying the chef's name constitutes a significant help in the consumer's decision. However, the real nature of the chefs' trademark is not exactly identical to the ones used in other industrial fields. Thus, the trademark, being a notoriety device, is not only the consequence of the chef's intervention, but also and maybe foremost, results from the guidebooks definition of gastronomic quality. Indeed, guidebooks build the selected chefs' reputation, in other words a kind of "trademark", and provide a means to identify them among the 160 000 chefs working on the French market. Guidebooks give an institutional and commercial identity to "Alain Ducasse" or "Guy Savoy" for instance.

Now, the trade secret device is manifold. For instance, is the recipe a *formula* that can enter in the trade secret category? However, in French law, when trade secret is evoked, most of the time, one refers to "*savoir-faire*". Indeed, chefs have a specific know-how that can be considered as a kind of trade secret. This skill acquired by experience (sometimes by a trial and error process) depends on each individual and allows chefs to orient in a certain way their preparations. Though, *la purée* of Joël Robuchon is specific to him and very different of the ones of Alain Ducasse or Marc Veyrat and so on. However, this sum of practical and technical information that constitutes the *savoir-faire* of each chef may be contractually transferred. From this point of view, a cook could sell his *savoir-faire* to others by a franchise contract. Although, often employed for fast-food restaurants or for middle class restaurants this mechanism goes encounter to gastronomic precepts and especially to the necessary creativity of gastronomic preparations. In fact, gastronomic practice lays on the chef's personality and can not be infinitely reproduced as for fast-food restaurants for instance.

Actually, the problem of implementation is linked to the difficulty to value creation. But, this problem is maybe lower than it looks like for industrial creative goods. Indeed, contrary to pure artistic goods, industrial goods are produced by firms, supposed to behave rationally. So, routines, experience,... conduct their managers to know the "price" of a patent for instance that can be revised through time according to the impact of the invention on everyday life (e.g. the vegetable mill vs. a useless invention).

Eventually, these mechanisms grounded on the industrial dimension of production seem to be either marginal or distant from gastronomic preoccupations. A first solution may be to use tradenames. In fact, even if this kind of institutional mechanism is not grounded on creativity, it could institutionalise a label of "*grands cuisiniers*" grounded for instance on guidebooks lists that promote chefs performing courses based on creative heritages. This kind of apparatus could significantly clarify the notion of "grand cuisinier": only chefs selected by guidebooks could pretend to be labelled. For the moment, it is not the case. Another important question could be the one of the legal status of this potential label – private or public. Moreover, one could ask the question of the elements to protect. Creative recipes? Chefs' reputation? It seems difficult to resort to legal enforcement to make sure that every chef in every restaurant in France (and why not around the world) does not wrongfully propose a recipe as his own while it has been invented by another cook and protected by a label. The case of chefs' reputation protection is probably softer. Actually, an action for slander is always possible and does not need new strong enforcement rules.

A second way is to accept the chefs' claim, asserting recognition by the means of AR.

The use of artistic IPRs

In general, two kinds of protecting cultural creation are opposed: *author's right* and *copyright* mechanisms that distinguish themselves by their object, their beneficiaries, their scale and of course by their prevailing locus.

Eventually, these two systems have many-sided differences lying in the existence or the non-existence of a moral right defined for cultural workers. They first apply distinct analyses to economic goods. In other words, whereas the CRS implicitly admits no difference between cultural and non cultural goods, the ARS considers that cultural goods have something more than non cultural ones: they result of a creation, and creators must be protected and promoted. On the contrary, from the copyright standpoint and according to Paris (2002), there is no difference between musicals and basket shoes, although there is a huge one for the author's right!

The application of an intellectual property right to heritage goods would give an *intellectual added value* to production. First, it would symbolically increase the value of the intellectual property right owner who would become in the consumer mind a "cultural worker". Second, he could also pass on his social recognition to prices. In this case, one may expect the appearance of a kind of "creative premium" playing the role of a quality signal for consumers. Moreover, an intellectual property right on heritage goods could have a positive effect on creativity and lead to a virtuous cycle of quality improvement. Heritage goods are by far cultural goods. So, their consumption is influenced by conspicuous characteristics (Veblen, 1899; Leibenstein, 1950). Consumption occurs most of the time in public areas. Thus, by institutionalising producers' creativity a definition of an intellectual property right on heritage goods would conduct to a stimulation of an already rationed demand and accentuate its conspicuous dimension.

But one can not ignore, according to Throsby (2001) that assigning an IPR to a creative good, does not depend (only) on the kind of good involved, but also on the bargaining power of its producers. In fact, some professions do not have power enough to impose to others the acceptance of an IPR.

The international dimension of creativity-based goods heritages has also to be taken into account. Indeed, if a country succeeds to implement an IPR system for this kind of goods, one might expect that this country would become an attractive place for creators. Although some heritage goods, as monuments for instance, can not be moved from their location (e.g. the Louvre will always be in Paris), some "grands couturiers", "grands cuisiniers" or maybe singers would be attracted to the country. A real alteration of competition and of the location of production may occur.

Gastronomy appears as a creativity-based good heritage. First-class cooks use collective memory means to create new courses. The French culinary heritage constitutes their working basis. From that standpoint, one can ask the question of incentive to create synonymous for this kind of good with a renewal of heritage. In fact, when producers are not recognized as creators (both symbolically and financially), are they incited to stress their creativity? For a long time, aware of this lack of recognition and also of the cultural dimension of gastronomy, French high-class cooks (for instance Alain Ducasse, Marc Veyrat or Paul Bocuse) claim for the recognition of their activity by the author's right system (ARS). Their main argument consists in saying that protecting them by the ARS would prevent the systematic plundering of their original recipes: it would protect them from copying. This would protect their private heritage of craft and creative knowledge. Chefs assert that their activity would become profitable and the incentives for cooks to remain original and creative would be significant. Basically, French chefs are convinced that this device would lead to a virtuous cycle of quality and creativity improvement.

Despite their claim, nothing has been done until now. Is this absence due to impossibility or to a delay of implementation? In fact, two ways have to be considered: the *feasibility* of the recognition and its *opportunity*. Considering first the feasibility of the application of an IPR to gastronomy, it appears necessary to define the object to protect, i.e. the "*œuvre gastronomique*". Is it really possible to determine an object capable to be protected? Would it be the recipe? The preparation? The aesthetic form? The production process? Or something else? Regarding now the opportunity of such a

definition, the perspective is very different. Is author's right the best means to incite *grands chefs* to be creative? In order to answer, it is necessary to evaluate the relevance of this implementation and to compare this system with other devices proposed by intellectual property.

Defining an AR on a creative work supposes to choose an "object to protect", what French law names "*oeuvre de l'esprit*", and especially for the case of gastronomy: the "*œuvre gastronomique*", in other words, the creation deriving from the author's mind. But which part of the chef's production is able to get this title? The "*food amenity in its whole*" or just a "*piece*" of it? The response is not obvious. The problem is not only linked to the right holder himself, but to the resource on which the protection mechanism is entitled to be focused. Which resource does create value and does convey heritage?

The specificity of gastronomic good and particularly the fact that it disappears when it is consumed seems to exclude logically gastronomy from the author's right definition. As a matter of fact, some authors tell that only a permanent work can have access to the AR definition. But some examples like the case of *Land Art* (e.g. the creations of Christo) of which nature implies a quick disappearing does not theoretically exclude gastronomy from the implementation of the ARS.

Furthermore, the guidebooks role has to be taken into account. Their selection gives notoriety to cooks and what is surprising is that chefs, by the guidebooks intervention become unique. Thus, no one else than Marc Veyrat can issue a food amenity of Marc Veyrat (the food amenity is a real extension of the *chef's personality*). Then, the question is not how to prevent copying but really to know whether the ARS is useful to protect a good that it can not be copied. From that standpoint, the answer is not favourable to the ARS. In fact, the implementation of AR to gastronomy would conduct to *entropy problems* related to the difficulties to list exhaustively the actions undertaken by each individual involved in the gastronomic creation. As a matter of fact, this system would become very complex and the existence of AR would induce the claims from many categories of gastronomic workers: people working in the kitchen (they intervene physically in the production), people working in the restaurant room (slicing, flambéing, etc.). They are all "performers" of the food amenity. One can imagine that they would ask for the implementation of performing rights (as it is the case for music or cinema).

5.2. IPRs on common heritages

Common heritages are difficult and almost impossible to protect. Actually, these creative heritages belong not to a identified crafter but to the people of the gastronomic profession. As a matter of fact, the French cooking style can be copied in China, but in this case there is not a direct competition between copiers and original crafters for location reasons (food amenities are not substitutable). From that angle it seems clear that the means potentially used to protect gastronomic common heritages are not legal enforcement rules but lean on syndicates and associations interventions. They allow the information circulation between professionals.

6 IPR and management of creative heritages in the Haute Couture industry

In the Haute Couture industry creativity based goods heritages and creative heritages, through their multiple dimensions, play a key role in the development and the competitiveness of the sector. However IPR on them are often less defined, that explains the present attempts to precise and enforce them and the present strategies of leading firms.

6.1. IPRs on creative heritages in the “couturier-créateur” model

Until the end of the 20th century, some heritages were managed within the Maison de couture, the legal preoccupations were weak and most IPRs were less defined.

- Craft knowledge heritage. As a collective knowledge heritage it benefited to individuals through training and cultural atmosphere. Therefore, it was for a part encapsulated in the individual skills, increased their value and circulated with them when workers changed their employer. No IPR on this collective heritage existed although it functioned as capital.

For another part the craft heritage was a club product (know-how, routines, procedures...), emerging from synergies, and related to the special style of the Maison. The creator (or the “Maison”) had an implicit IPR on the *usus* and the *fructus* of this club heritage but no explicit IPR and therefore no IPR concerning its *abusus*; then it was usually not transferable. Its value was reproduced through the training of new employees getting in touch with the older ones in the “Maisons”. If the Maison disappeared the collective specialised knowledge was generally lost.

For a last part craft knowledge heritage was the collective and common heritage of the Parisian fashion district, with free access but within the district.

- Creative knowledge heritages of the “Maison” were more difficult to reproduce through time as the creativity appeared as the proper of the creator, the “couturier-créateur”, even if more people (the stylists, the managers) contributed to creativity. The creator owned his individual skill and had a partial IPR (*usus* and *fructus*) on the collective creative skill that he was able to give rise to. Conversely, the transferability of IPR was weak, the creative knowledge and the corresponding heritage were idiosyncratic. The “Maisons” were strictly connected to the personality of the founder according to an artistic logic and not a managerial one. No distinction was possible between the physical creator and his creative heritage, so CH could not be allocated as an autonomous resource and no PR could be entitled for it. Many “Maisons” disappeared when the creator died and could not be substituted by a sufficiently creative successor. As the population of firms was highly unstable and as some firms disappeared, this kind of heritages was often lost. In most cases, market failed to organize the transfer and the re-allocation of these heritages.

No IPRs existed on collective creative knowledge heritages but they were linked to a special place, the Parisian district, which protect them from absolute free access.

- The heritages of creative products included specific models and general styles. Particular models were protected by patents (in France, the IPRs on “dessins et modèles”). These IPRs were less enforced (foreign buyers might copy the designs) but as connected to the creator’s style they were not very useful in other styles. Moreover, the trouble would be little because the relation between customers and producers was a personal one and not a market one, so customers directly addressed their demand to legal producers. And, if a copy exists, IPR would not be a solution because it would have been very difficult to demonstrate that one stylist has copied another one instead of having been inspired by the same social and cultural atmosphere. As materials were expensive, piracy was difficult. It mainly concerned ready-to-wear which was not the core of the Haute Couture. As above, the styles were too connected to the personality of the creator founder, who was the owner and the chief of the fashion firm (Dior, Saint Laurent, Balenciaga...). Then, they were not transferable, disappeared with the death of the creator, and were lost.

- As far as the image of the creator is concerned, accumulated reputations were internalised in the firm and protected by the trademark. Nevertheless, this trademark was not a market IPR but a personal IPR: it takes the form of the “griffe” (the name of the creator). This heritage was transferable between products, that explains the success of derived products (les “accessoires”), but not between firms. When the firm disappears reputation heritages, the value of which is idiosyncratic, disappeared too.

- Other common heritages (styles, tastes, institutional and cultural ones) were a common property of the French fashion system. No IPR protected them but their use supposed an idiosyncratic link with this system.

Therefore, in the age of the dress-creator, intellectual property rights can be less defined without any substantial loss of efficiency and equity in the present time but with strong losses through time:

- when the firm passes through time heritages are internalised
- when the firm disappears the market transfer of heritages is generally impossible.

In the new age of market fashion, the “Maisons” are purchased by financial groups of luxury industries. Then the question of IPR is changing.

6.2. Privatization and management of creative heritages

The new financial groups of luxury industries are very interested in the valorisation of the Maisons’ heritages and develop a more rigorous management. They are confronted with two key problems. The first one is the reproduction through time of the value of their heritages by the groups. They are in a long term and managerial logic, no more in the artistic and individual logic of the great couturier. The second one is transfer between firms or groups, at a moment of time, of rights on heritages. To solve these two problems, new IPR are necessary. They have to be separate from the person of the creator to allow transmission, either through time or through space, within the group or within the market, and enlargement of heritages. They have to be well defined to allow heritages protection and transfer. Then the market model of fashion implies a better definition of IPRs on creative heritages and the emergence of a market for them.

- For the private club heritage of craft knowledge the main change occurs to keep it within the firm or the group for a long time. It is the case of accessories producers e.g. Hermès or Vuitton. A great attention is on workers’ training. Their narrow specialization in the firm’s products prevents the constitution of an external labour market, so the lack of specific IPRs on the club heritages does not avoid their transfer through time within the firms. At a moment of time, this private club heritage can be transferred through market. New luxury groups take the control of existing firms to develop their production of accessories.

- An important value is, for the groups, that of creative knowledge heritages but these cannot be separated from the personality of creators, cannot be managed as standard inputs and transferred through time as capital. Transferring them through time, after the dead of the creator founder, implies a disconnection between the creator as physical person and the name of the creator. The trademark gives a way of solution: Dior is one of the famous trademark in the world (and more than one hundred of latest born children received this name as first name in 2003) but Christian Dior is dead until fifty years. The trademark is no more the “griffe”. Nevertheless, this process is not easy.

- To produce new creative products from the heritages of creative knowledge and products implies organizing a new idiosyncratic link between the heritage of the Maison de Couture and a new creator, able to reproduce the value of this resource. Lagerfeld has to maintain and expand the value of Chanel’s creative heritage, Galliano that of Dior, and so on. When Lagerfeld arrived within Chanel he started by studying, during several months, the Chanel’s style. How to define it, how to make the new goods bearing the Chanel brand identifiable as maintaining the Chanel’s spirit ? They can succeed and, then, the heritages are a source of value, they can fail and the potential value is lost. Then the value of the IPRs on the CH is only a potential one and CH are not standard economic resources able to circulate by themselves on a market. That increases the importance of the work of the new stylists and their key position in the firm; managers have to be able to allow the expression of the creator’s creativity, despite his fuzzy behaviour.

These creators acquire a new specific asset, their ability to maintain and expand the value of the heritages. Then a market for these skills is emerging. Nevertheless, it is a narrow market. When Tom Ford and Domenico De Sole announced that they leave Gucci, the staff began to seek successors but, as they themselves tell it, the potential candidates were a few. Moreover, creators may use turnover, according to market incentives. These are as important as a market of stylists is

emerging and is necessary to allow the renewal of creators. Managers seek to prevent opportunist behaviours by giving creators a share in the profits or a share of capital, that is to say to share with them IPRs. Sophisticated contracts manage the relations between great creators and groups. Galliano has a share in the profits and capital of Dior, so has an incentive to use efficiently Dior's heritage; at first he was authorized to develop his own firm, but afterwards LVMH preferred to take the control of the firm. Internal monetary incentives to creativity can be cancelled by external – market – monetary incentives to turn job.

Lastly, IPRs do not allow separating strictly and clearly the using of Dior's heritage for producing Dior and for producing Galliano goods. Hence, there is a hold-up problem. Dior's heritage contributes to increase Galliano's reputation and not only the firm's reputation. The owner of the heritage (the firm) is not the unique user of the heritage and cannot precisely organize its utilization by his employees, among whom the creator. So, the economic links between old heritages, new heritages, creators and firms are a very important point but the legal links are, now, not sufficient enough to manage them all. Contracts and IPRs remain incomplete.

6.3. Reputation heritages: from name to trademark

The reputation heritages get a growing value for the groups of luxury industry according that the market of luxury seeks mass production and markets. Then they are anxious about a strong enforcement of IPRs on the trademarks.

These IPRs allow them to use their pre-existing reputation for new types of products: obviously they create new accessories to propose consumers a global luxury goods set (Vuitton produces not only luggage but bags, then shoes, then pens, then watches, and so on; Hermès adds a cloth collection designed by Jean-Paul Gaultier to his traditional accessories). The IPRs also allow corporate restructuring in this growing industry.

Another main objective of groups concerns the image heritage of the "Maisons": the name of Dior or Saint-Laurent is always a sign of quality and creativity, and fashion goods are semiotic goods. But these creators are dead or retired. The problem of the present owners is to transfer the positive image of the great creators who found their "Maisons" to the name of the firms. Therefore, the question is to start from the "fashion designer's name" –the "griffe" (the association between the creative products and the name of the creator) – and go to the mark (the association between the products and the name of the firm). This transfer allows an extension of the value of the designer's name through time and space. The value continues beyond the death of the great creator and spreads beyond a particular opus over the whole product range². The groups organize communication policies to improve the reputation of the mark: creation of museums or exhibitions (e.g. Yves Saint Laurent and Giorgio Armani at the Guggenheim), purchasing of stores in the great places of the great cities in the world.

Now, the capitalization of heritage in the brand allows the transfer of IPRs on reputation heritages. Financial groups can buy and sell firms and associated marks; the main example is the fights to control Gucci: Gucci's heritage value can be used as well by PPR as by LVMH group because Gucci is no more a creator's name but a brand. Nevertheless, the evaluation of the mark is very uncertain: in 1977, the sales of the Armani's woman collection were 800 millions of lire, three and half years after it grows up to 40 billions. And how to evaluate a mark the creator of which is dead or out? What would be the value of Cardin's enterprises without Pierre Cardin or of YSL without Saint-Laurent or Gucci without Tom Ford? And how to separate the value of Gucci between Tom Ford, the creative stylist and Domenico de Sole, the creative manager (Beaufumé, 2000) ?

² The value of the mark image is especially important for some products of the luxury industries such as perfumes. In the case of the perfumes of the French Haute Couture firms, the value of raw materials is less than ten per cent of the price; the most important value is given by the image of the trademark and the general image of French luxury.

6.4. Creative piracy and vulgarisation of creation

In the fashion industry it is very difficult to delineate a IPR on a singular product. Although there is a bit of creativity in mass-production, the most important part of artistic creativity is concentrated in the top of the pyramid, the “Maisons”. There are two main types of creative piracy.

The first one is piracy coming from firms and countries which strictly copy designs and models and supply a less expansive production; they save on creative labour and use, sometimes, inferior quality materials. This kind of piracy benefits from lower wages costs. French and Italian professional institutions have obtained a “designs and models” statute, immediately applicable, and work on European projects of a directive about author’s rights and designs and models, to improve protection in every country (Benhamou, 2001). They are afraid the European enlargement leads to a strong growth of piracy.

The second type of piracy is the creative piracy of mass fashion. The protection of designs and models cannot, today, prohibit the use of new models of Haute Couture by the manufacturers of mass fashion. It can prohibit complete product piracy: a firm cannot sell a cloth labelled Saint Laurent if it has not been produced in the Saint-Laurent workshop. But, in the present legal system, nobody can prohibit street fashion to copy the style and specificities of the model. And the new fashion technologies allow a faster copying. Professionals speak of the Zara fashion way: fifteen days after the parades of Haute Couture and Prêt-à-porter collections in Paris, everybody can find in the Zara’s shops very similar products. IPRs are inoperative against this kind of copy:

- No confusion can intervene: prices and quality are very different; but mass fashion manufacturers can therefore economize creative work and confine themselves to an adjustment work.

- As in the age of the dress-creator it would be very difficult to demonstrate that one stylist has copied another one and, even, more difficult because creation is more inspired by the social and cultural atmosphere; some organizations are specialized in the production of trend selection (the “cahiers de tendances”). Nevertheless, everybody knows that creative piracy is systematically organized. Then professional organizations are lobbying to define better protections of IPRs, first and foremost within the European legal system.

Another means of fighting against these two types of piracy is to play on consumers’ preferences. The policy of “Haute Couture” and “Prêt-à-porter de luxe” firms is, thus, a communication policy to persuade consumers of the social value of the brand. Simultaneously it is a policy to increase the value of the brand, to differentiate it from the standards brands and build it as a luxury brand, if possible a star or superstar brand.

6.5. IPRs on common heritages

The two main issues are the management of common heritages to allow their reproduction over time and their management to make them productive.

The common heritage of craft knowledge is a configuration of specific assets. They are strongly linked to a local geographical context and represent non transferable assets. No market can be organized for them, no IPR can exist. These assets are in a formally free access but, in fact, can only be used if firms choose a local installation. Geographical localization constitutes an entry barrier and creates an idiosyncratic relation for the present firms which benefit from these assets. An important consequence of the lack of PRs on this heritage is its lack of economic management. Nobody is responsible for the reproduction along time of the heritage and firms are in a free riding context. As a matter of fact, the crisis of the Haute Couture leads to a contraction of the craft sector traditionally linked to it and to a waste of high qualified skills. Public policies are necessary to manage the economic value of these heritages. The institutional heritage, with the model of the Maison de Haute Couture, also, is not legally protected. It can be duplicated in other countries but it is connected to the specificities of the Parisian fashion district and to its specialization in a very narrow cluster of the fashion system, the Haute Couture.

The creative knowledge heritage is also locally embedded but no market and no property rights manage it. It favours French firms but foreign ones can benefit from it by delocalization in

Parisian district, by purchasing French firms and by hiring creators who have benefit from this creative atmosphere. The common heritage of styles is a common one but represents a higher value for the firms which produce culturally closer creations. No IPR is defined on these assets and free access is the rule. It is the same for the common heritage of tastes, the semiotic and image heritage of the Parisian Haute Couture and French touch. Then French firms seek to strictly connect the image of French luxury to their brands: advertising for perfumes always indicates the brand and the name of Paris. Today, it is the only way to avoid piracy and the multiplication of pseudo made in Paris commodities. Tomorrow, there may be a local protection of geographic origin: some firms and institutions would like to obtain a protection and elaborate legal strategies.

To increase the productive uses of these common heritages, public and professional policies are implemented. Museums and exhibitions sustain and expand the semiotic and image heritage. They improve the image of the country and of its creative products as in the case of the “young British artists” campaign. Professionals now think that cultural institutions and policies have a strong economic effect on fashion and luxury industries (Muller, 2001). They organize industrial policies and partially transform common heritages into collective heritages, with a collective partial management.

The luxury groups, as LVMH and PPR, are particularly interested in the image of creativity given by these creations and develop sophisticated and expansive communication policies. They appropriate a part of the common heritage of the age of aristocratic luxury to transform it into a market and democratic luxury. In this new age, mass markets need strong images for their goods. The use of heritage is then an essential means of competition. Nevertheless the common character of the Haute Couture reputation leads to some difficulties. Financial groups of the luxury industry are mainly interested in the earnings of accessories (perfumes, bags, shoes, watches, pen...); the Haute Couture is no longer profitable but its creativity is the origin of the image and reputation effects. Therefore there is a contradiction: to reproduce reputation heritage needs reproducing Haute Couture creativity but groups seek to disinvest in the Haute Couture. And private strategies can conduce to free riding; every group wishes to benefit from the reputation but none of them accept to invest in the Haute Couture. The question is serious because reputation in creative industries is unstable; for instance, the idea that French creativity is today less important than Italian creativity may easily become a common judgment and lead to bandwagon effects. Therefore, private groups ask for collective and public policies³.

7 Some concluding remarks

Proposing an analyse of creative heritages from the IPR point of view implies first to specify the nature of CG and CH. Their specificity is extreme insofar as they are very distinct of each other and plus they depend on the paradigm of creation meaning that they are not reproducible or weakly, they are not comparable, and so on. In fact, these can be of many sorts: fashion, luxury goods, design-based goods, gastronomy, etc. Once done, it is necessary to find among existing IPRs the ones capable to be applied to Cgoods and CH. However, once more, specifying this question is absolutely not easy. No perfect IPRs can be defined for CH. The substitution of a market model of fashion to the elitist model of the couturier-cr ateur leads to a development of IPR to organize protection and allocation of creative resources, and particularly of creative heritages the value of which is growing. Nevertheless the specificities of such heritages prevent the building of a market of IPR on CH. The standard model of PR, founded on the paradigm of a function of production and a function of consumption, is partially irrelevant according to specificities of CH. Four types of problems arise. First is the common character of many creative heritages that involves the incompleteness of the PRs to define (e.g. case of YSL clothes collection). Second is the difficulty to separate creative heritages and person of their builders deriving from the exclusivity of PRs. A third limit can be found in the transferability of the PRs, and the fourth one is linked to the difficulty to enforce PRs on CH.

Plus, the extreme diversity of CH prevent to propose a universal model of PRs for CH. Proposing a common model for gastronomic and fashion heritages seems impossible even if both are CH.

³ Cf. the parisian project of « Cit  de la mode », with a participation of the profession and of the State.

Finally, these difficulties linked to the definition and implementation of PRs on CH allow actors to develop strategies concerning the uses of creative heritages that value increases significantly. From that point of view, CH become portfolios and the recognition of goods as creative ones makes revenues higher. It is verified for gastronomy with the selection settled by guidebooks and the increasing value of restaurants linked. And it is also true for HC, that is managed by luxury groups like LVMH, that manages its luxury trademarks by PRs.

One can ask whether this management scheme of CH does not tend to empty the creative nature of this heritages and transform them in economic values that can be easily be exchanged on a market place.

References

- Arthur W.B. (1989).** “Competing technologies, increasing returns and lock-in by historical events”, *Economic Journal*, 99, 116-131.
- Barrère C. (2004).** “Property Rights and Judicial System” in Colombatto E. (ed.), *A Companion on Property Rights*, Edward Elgar, forthcoming.
- Barrère C. and W. Santagata (1998).** “Defining art. From the Brancusi Trial to the Economics of Artistic Semiotic Goods”, *International Journal of Art Management*, 2, 28-38.
- Barrère C. et W. Santagata (2003).** *Une économie de la créativité et du patrimoine : la mode*, Rapport pour le Ministère de la Culture, Paris.
- Beaufumé F. (2000).** *Rencontres européennes du textile et de l’habillement*. Hyères 2000. www.festivals-hyeres.com/rencontre1.
- Benhamou F. (2001).** *Rencontres européennes du textile et de l’habillement*. Hyères 2001. www.festivals-hyeres.com/rencontre2.
- Besen S.M. and L.J. Raskind (1991).** “An Introduction to the Law and Economics of Intellectual Property”, *Journal of Economic Perspectives*, 5(1), 3-27.
- Caves R. (2000).** *Creative Industries, Contracts between Art and Commerce*, Harvard University Press, Cambridge, M.A.
- Chossat V. (2001).** Les processus de sélection sur un marché, le cas de la grande cuisine, *Thèse pour le doctorat en sciences économiques*, Reims, France.
- Chossat V. and O. Gergaud (2003).** "Expert Opinion and Gastronomy : The Recipe for Success", *Journal of Cultural Economics*, 27, 127-141.
- David P.A. (1985).** “Clio and the Economics of QWERTY”, *American Economic Review*, 75(2), 332-337.
- Frey B.S. (2001)** *Inspiring Economics, Human motivation in Political Economy*, Edward Elgar, Northampton.
- Grandstrand O. (2000)** *The Economics and Management of Intellectual Property. Towards Intellectual Capitalism*, Edward Elgar, Cheltenham.
- Laver J. (1995).** *A Concise History of Costume*, Thames & Hudson, London.
- Lehnert G. (2000).** *Histoire de la mode au XX^e siècle*, Könemann.
- Leibenstein H. (1950).** “Bandwagon, Snob, and Veblen Effects in the Theory of the Consumer’s Demand”, *Quarterly Journal of Economics*, 64, 183-207.
- Muller B. (2001).** *Rencontres européennes du textile et de l’habillement*. Hyères 2001. www.festivals-hyeres.com/rencontre2.
- Papandreou A.A (1997).** *Externality and Institutions*, Oxford University Press, London.
- Paris T. (2002).** *Le droit d’auteur: l’idéologie et le système*, PUF, Paris.
- Rocheffort R. (2001).** *La société des consommateurs*, Poches Odile Jacob, Paris.
- Santagata W. (1998).** “Propriété intellectuelle, biens culturels et connaissance non cumulative”, *Réseaux*, n°8889, Paris.
- Steiner G. (2001).** *Grammaires de la création*, Gallimard, Paris.
- Throsby D. (2001).** *Economics and Culture*, Cambridge University Press, Cambridge, U.K.
- Towse R. (2001).** *Creativity, Incentive and Reward, An Economic Analysis of Copyright and Culture in the Information Age*, Edward Elgar, Northampton.
- Veblen T. (1899).** *The Theory of the Leisure Class*, Macmillan.