Australian Government

IP Australia

The market for design: insights from interviews with Australian firms

IP Australia Economic Research Paper 03

Report commissioned by IP Australia and authored by:

Kwanghui Lim, Don O'Sullivan and Michael R. Falk

Contents

Executive Summary

The goal of this study is to provide insights into how the market for design operates.

We find that the formal protection of intellectual property through design rights plays a minor role in the decision making of firms operating in the market for design. This creates difficulties for buyers and sellers in transacting with each other and capturing value. We find that both buyers and sellers have adapted to imperfections in the market for design by developing reputational signals. Signals of a seller's reputation assume a heightened importance and we see strong evidence that sellers engage in strategies to manage these signals. We refer to these signals as the 5 R's: rigour, rhetoric, roster, rating and referral. Conversely, we find that signals of a buyer's reputation also assume great importance and again we see strong evidence of buyers engaging in strategies to manage these signals. We refer to these signals of buyer reputation as the 4 C's: contests, co-creation, curation and casting. Beyond influencing reputation, signals play a role in enabling buyers and sellers to influence each other's level of investment and effort in the transaction.

Our project is the first stage in mapping the dynamics and mechanisms of how the market for design operates. Our ultimate aim is to generate insights that inform how Australia might encourage the growth of design as a capability within firms.

Although formal intellectual property rights are perceived as having a limited role, our study suggests that there is a need to ensure the optimal functioning of design rights. There are clear policy implications in four other areas—in nurturing design talent, coordinating an Australian design narrative, providing recognition for the quality of Australian design and influencing demand for design within the local market.

1. Introduction

1.1 Background and Motivation

Design and design thinking have become increasingly important for firms in a range of industries (Brown, 2008; Lockwood, 2009). The *Australian Creative Economy Report Card* (2013) indicates that based on census data, the creative industries and creative work in other industries have emerged as one of Australia's strongest performers, with employment growing by a steady 2.8% a year from 2006 to 2011—40% faster than in the economy as a whole. Employment in design grew at 3.8%, twice the rate of the workforce as a whole.

Globally, high profile firms including Apple, Bang & Olufsen and Herman Miller are cited as successful users of design as a competitive weapon (Verganti, 2009). If the activity of design is gaining importance as a source of competitive advantage, one might expect a performance impact at the firm level.

Yet a puzzle emerges: design registrations appear quite low in terms of their visibility relative to other IP rights including trademarks, patents and copyrights. Within Australia, the rates of design rights and patent applications from residents have been roughly equivalent in recent years; however, the data shows that overall rates of design applications and growth are low in relative terms (6.8% annual growth, compared to 12.7% for patents in 2013).
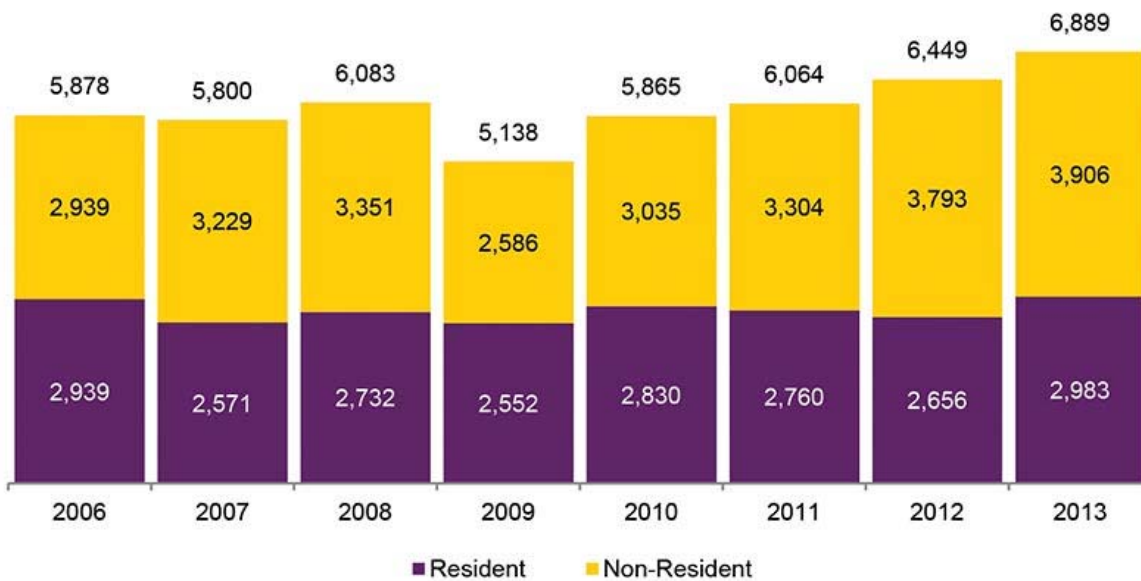
Figure 1. Design Applications, 2008-13. Source: 2014 Australian IP Report

One possible explanation is that design rights are effective only in certain contexts, or that they are only useful when combined with firms' managerial practices. The activity of design is likely to be bundled with a variety of intellectual property rights (IPRs), not just design rights (Amara et al., 2004). For instance, the design for a new Apple iPhone may only be feasible given new patented processes for creating the components to achieve that design (laser-cut anodized aluminium) and may only translate into a market value when combined with the firm's ability to protect its trademarks and build them around that design. None of these issues have been explored substantively in the management literature.

After discussion with IP Australia, we embarked on a project to learn more about design protection and how design is used within firms from strategic management and marketing perspectives.

1.2 Scope

In this study we explore the use of design by Australian firms. To do so, we conducted interviews with managers and designers at Australian firms, examining the interrelationships between design, marketing and strategic management. We rely on interviews to provide in-depth insights from dyads of buyers and sellers, so as to better understand the trade-offs and choices facing actors on both sides of the transaction.[1] Through these interviews we explore:

1. The perceptions of senior executives in Australian firms regarding the value of design and how design links to firm performance;
2. The relationship between the use of design and IP protection mechanisms (patents, trademarks, copyrights, secrecy, norms);
3. The link between design use and commercialization, including marketing and strategy;
4. The impact of design on firm performance.

Our study offers several important insights into the use of design by Australian firms. First, IPRs play a limited role in the business practices relating to design. Second, operating in a low-IP environment imposes costs on the ability of buyers and sellers to transact design. Third, buyers and sellers employ various signals of reputation to overcome uncertainty and reveal private information to the market. These signals flow both ways and are actively managed by market participants.

In the remainder of this section, we present a summary of prior research. In Section 2, we describe our methodology and, in Section 3, initial insights from our interviews. We discuss these insights in Section 4 along with our conclusions.

1.3 Prior Research

Broadly, in prior research, design is understood as a process, an artifact or a capability. We briefly deal with each of these levels of analysis below.

Design as a process

In the early management literature on design, designers are characterised as intermediaries, accessing specialised knowledge from within the firm (e.g. from R&D, marketing and production) and from outside of the firm (e.g. as relating to new materials, consumer behaviours and patterns of demand). Designers assemble this information as inputs to the design process, through which inventions are matched to markets. Thus, Walsh (1996) described design as "the domain of creativity where ideas are devised but also where coupling occurs between technical possibilities and market demands or opportunities".

In economics, the design process has been conceived more narrowly as a cognitive function that is primarily technical in focus. In their pioneering work on modularity, Baldwin and Clark (2000) theorised that designers "see and seek value", searching over a delegated solution space to improve the functional performance of an artifact. The design process means not only manipulating design parameters but also mentally stepping outside of the design process to partition complex problems.

In the design profession and design education, research has focused on the forms of reasoning that underpin 'design thinking'. Dorst (2011) introduced the term 'frame creation' to refer to the formulation of a novel standpoint from which a problematic situation can be tackled. Research on design thinking emphasises the lifecycle of design skills and practices within an organizational context. Dorst argues that while there are underlying principles to design thinking that can be taught, "experienced designers develop up their own processes that work across projects within a firm or professional practice".

---

[1] This study is a precursor to a survey to be conducted in the immediate future.

Design as an artifact

Design as an artifact is of greater relevance to our work. Key issues are whether design is sufficiently protected through intellectual property or alternative mechanisms, and how firms manage the level of complexity in design to market products.

There is a strong relationship that can be drawn between how design is utilized as intellectual property and the use of trademarks. Ramello and Silva (2006) observe that firms use trademarks to signal the provenance of a good and its distinctiveness relative to other goods. In contemporary markets, the chances of a particular brand becoming dominant increase in proportion to its communicative power relative to other brands. Following this logic, designs, like trademarks, are of increasing importance to firms in achieving market success.

From an intellectual property perspective, a strong level of protection has been found to offer entrant firms an important bargaining chip that they can use to negotiate with other market participants, thus enabling the presence of a 'market for ideas' (Gans and Stern, 2002; Gans Hsu and Stern, 2002). In a low-IP environment, incorporating non-imitability into design allows firms to pursue cooperative trade relationships through disclosure of early-stage ideas without being relegated to a weak bargaining position (Gans and Stern, 2003).

Researchers interested in the dynamics of competition within product markets have pointed to the significant role the release of new designs plays in diffusing information and enabling imitation. For example, Ethiraj and Zhu (2008), argue that the commercialisation of a design reduces uncertainty in an industry. Stated another way, the timing of imitation may be considered a proxy for the increased availability of information about a new invention. This generates a change in entry opportunities, with rivals exploiting available information to create superior-quality copies.

Along similar lines, contemporary scholars in economics and strategy suggest that firms able to manage the complexity of designs can exhibit flexibility in the degree to which they enforce ownership over intellectual property.

This control and flexibility can benefit a firm by encouraging the participation of collaborators and partners. On this note, the benefits of revealing intellectual property have been addressed specifically in relation to open innovation (Chesbrough and Appleyard, 2007), user innovation (Harhoff, Henkel and von Hippel, 2003) and technology development races (Pacheco-De-Almeida and Zemsky, 2012). The management of IP in conjunction with design has been revealed as a central component to creating successful product platforms (Gawer and Cusumano, 2002; Henkel, Baldwin and Shih, 2013).

However, while reducing the technical complexity of designs increases the potential for external players to participate in complementary innovation, it also exposes a firm to imitation—this includes the expropriation of specialised knowledge that may comprise a firm-level capability (Ethiraj, Levinthal and Roy, 2008).

Design as a capability

A third stream of literature views design as a capability within firms. Much work remains to unpack the nature of design as a capability and how (if at all) it is transacted between firms.

Firms that develop design as a capability are able to survive industry transitions. For example, Utterback and Suárez (1993) shows how in a number of industries, early stages in which new design ideas ferment are characterised by many entrants, only some of whom are able to develop a capability around that design (e.g., electrical as opposed to mechanical watches). The emergence of a 'dominant design' allows firms that have those capabilities to thrive, while driving the exit of many other firms.

The prospects of new entrants and incumbent firms can unexpectedly change with the introduction of new design when an industry experiences a technological discontinuity. In their seminal study on architectural innovation, Henderson and Clark (1990) viewed design as an embodiment of a firm's knowledge and cognitive capability. Baldwin and Clark (2000) extended upon this work in developing their theory on modularity, arguing that firms "hide" information in design. At an industry level, that 'information hiding' enables firms to economize on production knowledge via exchange of artifacts.

At the economy level, a number of studies have attempted to trace the impact of design on performance and growth (Bakhshi and McVittie, 2009; Moultrie and Livesey, 2013). Some studies have sought to identify the link between design registrations and design activities across sectors (Thompson et al., 2012; Arundel, 2000). Studies of the UK economy suggest that governments should invest heavily in the development of the design sector as a source of advantage (Swann and Birke, 2005).

Little prior work has been done on Australian firms focused on the link between design and management at a firm level, with the exception of a recent Australian Government-commissioned report (Bucolo and King, 2014) and several state government reports (e.g. Design Victoria, 2008).

In the economics and management literature on design, there has been a tendency for scholars to conflate design as a capability with design as an artifact (or form of intellectual property). Thus, Baldwin and Clark (2006) describe designs as the 'information shadows' behind all goods and services. Increasingly, efficiency in the modern economy is linked to the separation of research and design activities from production (Baldwin and Clark, 2000; Foray, 2004). This may occur via modularisation, or the market trading of design as intellectual property. These trends imply specific patterns of investment in specialised capabilities (Arora and Merges, 2004).

In this sense, theories on design and specialisation are converging, leading us to an important question that has been the subject of only limited research: how do firms manage to capture value from building and selling design as a capability? With the benefit of recent advances in theory, this presents a fertile area for new research, while recalling an observation made by leading management scholar David Teece (1986). He questioned the prevailing wisdom of the time that advanced economies could assume a 'designer role' in international commerce and leave manufacturing to firms in low-cost countries without losing crucial bases for appropriating value from design activities.

Our research suggests that leading design firms are highly adept at conveying to the market information about the organisational settings in which designs are produced. They also actively manage signals to overcome frictions in the market, to co-create and appropriate value. Indeed, within certain segments of the design market, this signaling appears to play a critical role in both the buying and selling of design.

In this matter, our work reflects the view put forward by preeminent design critic Deyan Sudjic, the current director of the Design Museum of London. Sudjic (2009) has described design as "the language that society uses to create objects that reflect its purpose and its values." In this expression he refers at once to the language of "things"—that is, the meaning of artifacts—and to the literacy engaged in their symbolic development, consumption and use.

2. Methodology

We conducted a series of semi-structured field interviews with senior executives in Australian firms.[2] Interviews are useful in early stage research as a means for identifying key relationships than can later be tested for generalizability (Yin, 2011). Our goal was to conduct a small number of in-depth interviews to derive new insights and to generate hypotheses to test in subsequent phases of this project.

As a first step, we conducted a series of pilot interviews with:

- market participants;
- thought leaders from government-funded organizations and programs (Design Victoria, the Victorian Design Integration Scheme, Enterprise Connect Creative Industries Innovation Centre, Victorian Eco-innovation Lab);
- senior executives from government agencies (IP Australia and the Department of Industry);
- academics; and
- participants involved in the ACIP Review of the Designs System.

Following these preliminary interviews, we identified appropriate dyads of buyers and sellers to focus on, so as to build an in-depth understanding of the market transactions from both sides. These firms are lead-users of design with a high profile within Australia. Moreover, design is of central importance to the commercial activities of each firm. Our interviewees were drawn from a range of industries, including: industrial design, architecture, interior design, furniture design, digital publication design, personal care products, retail, hospitality, property development and financial services.

We structured our interviews to address issues identified as being important in prior research:

5. Functioning of the market

    a) market structure
    b) buyer-seller interaction

6. Appropriability

    a) intellectual property rights
    b) co-specific and opaque assets

7. Firm-level attributes

    a) organizational capabilities
    b) marketing
    c) strategy

A basic schedule of our interview questions is included in the Appendix.

---

[2] This project received Ethics approval #1442294 from the University of Melbourne Human Ethics Advisory Group for performing the research including identifying specific individuals and firms upon their consent in this report.

The table below provides an overview of the interview set.[3] In the next section, we report on in-depth formal interviews with these seven organizations. Where possible, we triangulated the key findings through informal interviews with a broader, targeted field of market participants along with publicly available information.

Firm	Activities	Interviewee(s)	Position
Denton Corker Marshall	Architectural services	John Denton	Founder
Crowd Productions	Architectural & interior design services	Michael Trudgeon	Founder
Right Angle Studio	Digital publishing & marketing services	Barrie Barton	Founder
Aesop	Cosmetics & skincare design and retail	Dennis Paphitis	Founder
National Australia Bank	Financial services	Louise Long	Customer Experience Manager
Broached Commissions	Furniture design	Lou Weis	Founder
Henry Wilson	Industrial & furniture design	Henry Wilson	Sole trader
Molonglo Group	Property development & hospitality	Nectar Efkarpidis	Director

Table 1. Interview set

---

3. Key Findings

In this section we present key findings that emerge from interviews with buyers and sellers. Some interviewees sell to end-user design consumers, while some sell to other businesses. Interviewees highlight the role of design in differentiating themselves in markets characterised by intense competition, such as skincare and cosmetics, furniture and the hospitality sector. Reflecting the language used by our interviewees, we adopt the term 'high-design' to refer to the successful differentiation in the market through design.

We organise our findings around four key themes:

1. Formal protection of intellectual property rights (IPRs) feature only weakly in the strategies employed by firms that differentiate themselves through design.
2. Perceived weakness of the IPR regime imposes certain costs related to the imperfect functioning of markets.
3. Sellers employ multi-level strategies in selling, using common classes of signals in an attempt to shape buyer perception.
4. Buyers employ multi-level strategies using a different but related set of signals.

Our findings are best surmised with this observation by one of our interviewees:

> "I think reputation is the one thing that we look at and evaluate about a creative supply firm, and the work that they've previously done, in order to evaluate whether they're good enough to undertake the new work, previous to having a relationship with them."

Theme 1: Formal protection of IP plays a limited role

Market participants perceive that intellectual property rights (IPRs) are of only weak applicability to the business practices by which they stake out a market position.

Imitation: designs are not easily protected

Aesop, a highly successful Australian skincare and cosmetics company, designs and retails products that are not easily protected by intellectual property rights for design. According to founder Dennis Paphitis, "in terms of design, the implicit code of the company is to try and surprise by scale a little bit where possible." Gesturing to one of Aesop's products, Paphitis remarks, "how do you patent something like this? You can't, you'd be laughed at. It's just a large rectangular block of soap."

Further, all of the brand's signature details, from wholesale pharmaceutical packaging to its sans-serif fonts and alabaster labels, are "generically available components on the free market for anyone to use". Paphitis says, "from the outset, we tried to invert the conventional cosmetics cost-structure, which is something like 60% packaging, 30% marketing and 10% on the actual contents itself… The premise has always been how do you take existing off-the-shelf components and develop a cocktail that makes them ours." The strategy limits Aesop's ability to pursue formal intellectual property protection.

The outcome is that the brand is widely imitated in the market, both within Australia and internationally. "There were, when I used to count these things about three years ago, 17 companies in this industry who were directly referencing what we were doing in a very overt way," says Paphitis. One competitor was "systematically malicious in the manner that they tried to replicate everything, including going into our stores, buying every single product, tracking down our suppliers, trying to poach staff, approaching our wholesale customers".

Aesop

Aesop produces and retails a high-end range of cosmetics and personal care products.

Founded in Melbourne in 1987 by Dennis Paphitis, Aesop has established itself globally within a highly competitive market. Aesop now has annual revenues of AUD$100 million, and a retail distribution network of over 100 signature stores and 150 department counters in over 13 markets worldwide. In December 2012, Brazil's Natura Cosméticos acquired a majority stake in the company for AUD68m.

According to Paphitis, the firm's success is due in large part to the firm's design capability: "Aesop's success sits on a sound commercial strategy, strong product proposition and good taste," he says. Aesop is now regarded as a poster child for the potential for high-design amongst Australian firms. The firm's approach has been to utilize distinct and consistent packaging design for their products to achieve what Paphitis calls a "universally applicable product and signature".

For each store, Aesop leverages bespoke architectural design and interior design, matched to regional markets interpreted down to a street level. The brand personality has three design manifestations: "We think about Aesop as a kind of fictional character and the stores are this character's wardrobe. The store downstairs [in Fitzroy, Melbourne] we consider the `jeans and t-shirt' of this character, and the store in Collins St is considered the `suit'. The stores need to fit the character, but they are individual expressions that belong to the streetscape, rather than assault it."

While formal IP protection (including design rights) is perceived to be of limited relevance, we see evidence of companies respecting the intellectual property of their partners.[4]

The following incident cited by Aesop's Paphitis is a good example of a buyer respecting a seller's intellectual property. Aesop is a major buyer of architectural and interior design services. Paphitis describes the construction of their signature store in Chelsea, New York. A key feature of the Chelsea store is a specially designed ladder system for displaying products, which the company reinterpreted from the design acquired from one of their former business partners. According to Paphitis, "well, our European country manager then saw these and had an absolute fit. He said, we've violated the design of this young French firm and there's going to be an IP issue here. We all swing into major damage control mode. I get on the phone to these architects who are right into their weekender… They were laughing and they just said, you know it's so nice of you to think that, really, it's not a problem."

"Even though there was not malicious intention there, we need to respect that though they're being paid for that work, to take and replicate it is just morally wrong… I mean it's a behavioural thing. I think that the agreement that we signed is an implicit one. I mean there's a legal one, but the one that really matters is the handshake and personal agreement that we're going to work together and if we do this well we will both benefit from it, therefore we don't want to mess you about."

Broached Commissions

Broached Commissions is a furniture design company founded in 2011, with a significant media profile for its high-end furniture design collections. Lou Weis, our interviewee, is a former Creative Director of the State of Design Festival, Australia's largest public design event.

Broached Commissions applies a collaborative research and design process to respond to significant events in Australia's national history, often as a basis for private commissions for corporate clients. The firm has brought together the talents of some of Australia's leading contemporary designers, including Trent Jansen, Adam Goodrum, Charles Wilson, Max Lamb and Lucy McRae.

---

[4] An emerging literature on social governance as a means to regulate the use of intellectual property is described in Fauchart and von Hippel, 2008.

We see evidence also of sellers respecting the intellectual property of buyers with whom they have transacted. Broached Commission's founder Lou Weis says, "We just did a table... [for a] private client. It was an original design and they asked for it to be a one-off—that we would never make that table for anyone else. It doesn't mean we can't do that style again but that's a grey area, right, because they go to a friend's place or they see it in a magazine and it's only 10% different…, then you alienate a client who might have spent $100,000 with you over the last two years."

Applying for and protecting intellectual property rights is not seen as a good use of time

When asked about protecting IP, Henry Wilson detailed his engagement with a patent and design protection attorney, which led to his view that the tasks of registering designs and patents were not the best use of his time. "You've got to have the ability, from what I understand now, to really chase that kind of protection if someone were to do something with [a design]. I'm much better off I think using my time to be there first, making it *en masse* at an achievable price-point, rather than trying to protect it."

Henry Wilson

Henry Wilson is a young, award-winning industrial designer.

Wilson is based in Sydney, where he runs a successful industrial and furniture design studio. He trained at ANU in Canberra and then at the prestigious Eindhoven Academy in the Netherlands. His work has been featured in many design review publications, including *The International Herald Tribune* (a division of *The New York Times*). Wilson has also won several high profile awards in recent years. In 2011 he was the winner of the Bombay Sapphire Design Discovery Award. In 2012 he was the winner of the Qantas Spirit of Youth Award in Craft and Object Design. In addition to gaining prominence within the Australian market, Wilson has exhibited work in Europe, the UK and USA.

The opportunity costs related to seeking intellectual property protection were amplified in Wilson's view by his understanding that the protections available in the Australian market are ineffectual. "When you look at [Company M] and the other design stores around Australia that are just selling blatant knock-offs of foreign imported furniture, it doesn't give you a lot of hope that maybe someone could just do [Wilson's signature product] an A-joint[5] replica anyway. So why would I bother protecting it in the first place—they can even use your name to say `replica'. It seems kind of outrageous. We're probably the only country left in the world that's allowing this." Wilson's IP strategy has been to take out trademark protection on his name and brand, eschewing options of patents and design registration for his products.

A focus on intellectual property rights can impede the creative process

While strong property rights have been considered by academics and policymakers to be the cornerstone of a creative economy (Howkins, 2001), some individuals within the creative industries consider the intellectual property system to be anathema to effective creative processes.

Nectar Efkarpidis, Director of Molonglo Group, was responsible for coordinating the creative processes behind the development of NewActon, an intensely mixed-use precinct of landscaped gardens and community gardens, art, retail, entertainment, residential and commercial spaces, born through the efforts of a diverse group of architects, interior and industrial designers, graphic designers, builders and artisan-makers. The development includes several residential apartment towers and commercial businesses including cafes, restaurants, bars, a Palace cinema and a gallery. Hotel Hotel, a high-end design-led 68-room five-star boutique hotel, is an icon that sits at the centre of the development.

---

[5] An "A-joint" is a type of bracket in furniture making that Henry Wilson is known to have reinterpreted and brought to market in a variety of products including tables, shelves and other furniture and fittings.

Molonglo Group

Molonglo Group is a family-run, artisan-led development company based in Canberra.

Established Canberra in 1964, the company grew from a single grocery shop to owning one of Australia's largest independent supermarket and wholesale chain with annual sales of over AUD$250 million before it was sold to Woolworths in 1996. Over the years it has diversified and expanded its operations to encompass property development, community development and content development projects.[6] The company is co-owner in several small businesses, including a bespoke bicycle making business, restaurants, and a hotel, which they built and now run.

The common theme to Molonglo's activities is an emphasis on artistry, design and making. In addition to developing a strong commitment to design in-house, Molonglo Group has actively developed close relationships with nationally and internationally acclaimed design service providers. To complement its commercial activities, the company hosts the free annual Art Not Apart Festival, provides space at reduced rent to School House artist studios and supports the National Gallery of Australia.

In Efkarpidis' view, intellectual property is not central to Molonglo Group's business approach. Efkarpidis' objective is to have NewActon imitated as 'best practice' by developers internationally. Our aim is to "allow people to take that information and do more things with it," he says. "I guess the irony is, if you have a plateau of [design rights] being registered but a rise in the creative industries, it's because they understand that it's the people and those people working together that gives them the competitive edge."

Design is only valuable to the extent that the company is able to foster adoption by stakeholders: "The nuance for us was, it's not just about high-design; it's about how you make places that people feel comfortable enough, are inspired enough, can colonize—and I don't use that word lightly, I mean how do you get them to take the space, occupy it, make them feel like it's their own—then continue to evolve it."

Market participants focus on design as a capability

One possible explanation for the limited attention that interviewees give to design rights is that they typically emphasise the importance of design as a capability rather than an artifact. While designs and other rights protect the artifact, market participants are often more concerned about the capability.

Aesop's Dennis Paphitis alludes to this when discussing the challenge of ensuring that the capability is embedded within the organisation, rather than simply being limited to one or two individuals within the organisation. "I have until now preferred to work externally because I think it injects a strong flow of oxygen into our thinking and what we do. But it's hardcore work and that's been my role in the company for the last five years at least. As we try to institutionalize this behaviour, if you like, how do you retain this autonomy, distinctness, if I'm not going to be doing it. Even if you bring in ten people, the orchestra can grow and change but there still needs to be a conductor."

Addressing the issue from a different perspective, sellers in the market for design emphasise the role of capabilities in enabling them to produce strong design outcomes for clients. Buyers of design echo this perspective, pointing to the importance they place on being able to work with designers in the process of producing a strong outcome.

"Our view is, the IP is in the people: it's embedded in the way we work. On the outside you can take all the designers that we have, employ them all, and you still won't get the same outcome, because it's not an individual designer who's producing an outcome. It's the collection of those people in an environment where the embedded knowledge of those people working together, with a client that has the aspirations and wants to see it through and everyone is excited, that works." Nectar Efkarpidis

---

6 Source: http://www.molonglogroup.com.au/about/history viewed on 23 June 2013.

Theme 2: The impact of weak intellectual property on the market for design

In the context of cooperative trade between firms, design products and services are often sold as ideas and then made/delivered. Design rights afford protection over a narrow domain of intellectual property subject to exchange, creating difficulties for buyers and sellers in these 'markets for ideas'.

With weak formal protections, it is difficult for sellers to capture value from buyers

Interviewees observed that the challenge of value-capture arises through the threat of buyers expropriating sellers' ideas and executing the design themselves (i.e. cases where buyers believe they can 'make' without having to 'buy').

Right Angle Studio

Right Angle Studio is a digital publishing company founded in Melbourne in 2004.

The firm has garnered significant reputation for its online city guides, *The Thousands*, and has leveraged its audience to expand into consumer insight, marketing, branded publication design and event development. Many of the company's sponsored ventures, intended to showcase the creative and cultural movements within Australia's major capital cities, adhere to an 'expand and collapse' philosophy.[7] For example, in 2010 the company set up the Lost and Found Hotel, a temporary 'one-room hotel' in Melbourne's central business district. Commissioned by Tourism Victoria, the hotel was intended to promote Melbourne's design sector: everything in the store was made by a Melbournian or told a story about Melbourne's design scene. More recently, the firm has established permanent independent venues such as Rooftop Cinema in Melbourne and The Golden Age Cinema and Bar in Surry Hills, Sydney. We interviewed Barrie Barton, Right Angle Studio's founder, and strategy and insights director.

Barrie Barton recalls being engaged by a hotel developer on the premise of designing a rooftop cinema. "I was very generous with describing how it is that a cinema business works and how we would set it up and run it, everything from marketing to film programming. It was supposed to be joint venture. When we gave him the contracts he went missing in action. Cut to three months down the path, I read an article about the rooftop cinema happening. I've been to that cinema and it's f**king dreadful. It proved to me that someone else can do a rooftop cinema, but they can't do the rooftop cinema that we're describing."

Crowd Productions

Crowd Productions is an innovative design practice based in London and Melbourne.

In 1983, Crowd Productions was established as a studio, publishing a design and cultural magazine entitled CROWD. The business later diversified to focus on advertising, website production, furniture, industrial design and eventually architecture, interior design and strategic planning. The firm is renowned for its method of using 1:1 scale prototyping in designing retail environments that reflect actual behavioural and consumption patterns. Recent projects include the design of flagship cinema complexes for Hoyts, 'digital cinema capsules' for the Australian Centre of the Moving Image, and exhibition projects for the 2000 World Expo in Frankfurt and the Museum of Sydney.

---

7 Source: http://www.creativeinnovation.net.au/features/company-spotlight/right-angle-studio/ viewed on 24 June 2014.

A consistent pattern can be observed among sellers, that they have difficulty communicating the value of design to buyers and this negatively affects the buyer's willingness to pay.

Dr Michael Trudgeon, co-founder of Crowd Productions, also highlights the challenges of demonstrating value to, and capturing value from clients and prospective buyers: "We spend half our lives in presentations to clients explaining why we cost so much at the front end, showing them what the cost savings have been at the back end… Our survival strategy at the moment is to go in and talk to people very laboriously about what we do and the results that we have achieved."

The challenge to sellers when capturing value from buyers may also emerge as a consequence of the often-unique nature of each commission.

We revisit the example of the one-off table that Broached Commissions created for a private client. The challenge to the seller in this case is that it makes it difficult to build a scalable business based on a prototype. According to founder Lou Weis, "basically, you're delivering a perfect prototype, that's the pressure you put yourself under. This is a one-off, and it's been commissioned because it looks all whiz-bang. And then you make it, there's a problem, you have to re-engineer, you fix it and that costs you more money—all of that is not factored into the original price."

Denton Corker Marshall (DCM)

DCM is a major architecture firm based in Melbourne.

Founded in 1972, DCM produces landmark architecture, including iconic public architecture and urban design. Operating worldwide from offices in Melbourne, London, Manchester and Jakarta, the practice is a significant contributor to the global architectural scene[8]. DCM is best known for buildings including the Melbourne Exhibition Centre, Melbourne Museum, Bolte Bridge, Museum of Sydney and international projects including the Manchester Civil Justice Centre, Australian Embassies in Beijing and Tokyo and the Stonehenge Exhibition Visitor Centre in the UK. In 1996, DCM were awarded as Royal Australian Institute of Architects Gold Medallists, the most prestigious award the Institute offers.

We interviewed John Denton, founding partner. Denton was named in 2005 the first State Architect for Victoria and he has sat on various government boards including the Expert Advisory Panel on Cities for the Council of Australian Governments Reform Council (COAG).

The problem for sellers having ideas expropriated by buyers may be amplified in cases where buyers set up contests to induce sellers to reveal their intellectual property while waiving usual protections

According to architect John Denton, participating in government-organized contests has been an important means by which DCM has built its capabilities and reputation, but that strategy can carry risk. "We entered [a design contest conducted by a state government in Australia] for [the airport of a major city]. We did this whole design and we didn't win. But because they insisted that they had the copyright to everything, in that case we had to accede to it. They then turned to the person that they selected and said, listen we want that, and so they used our scheme. We didn't get paid a cent. Governments will do that to you, particularly in the transport side of government, they're pretty brutal."

Buyers face challenges when capturing value from sellers of design

Interviewees pointed to two dimensions of this challenge—broadly: adverse selection and moral hazard.

We first turn to the challenge of adverse selection, a situation in which asymmetric information leads to selection bias by an agent. In economics, information asymmetry has been shown to bring about a 'market for lemons' scenario, which arises from sellers having private information about the quality of goods they offer (Milgrom and Roberts, 1992: 129). Lacking the seller's private information, the buyer is

---

8 Source: http://www.dentoncorkermarshall.com/contact/

unable to identify higher quality goods and this suppresses her willingness to pay. As a result, some sellers of high quality goods leave the market—in effect, 'the bad drives out the good' (Akerlof, 1970).

The market for design exhibits the kinds of information asymmetry that leads to a lemons problem. Architect John Denton illustrates this problem by narrating his experience with Public Private Partnerships for public architecture. He observes that for projects such as [a major public hospital], the design is often sold to community stakeholders through the use of images which do not represent the true quality of technical detail encapsulated in the design: "With a tender for government, the pictures sell it to the doctors and the people who run the hospital; the written bit is analysed by Treasury and Finance, and the Department of Health, and they look at the numbers and don't give a stuff what it looks like. Not the slightest bit interested. So the picture sells it to the user, who says, 'that's fabulous, we've got to have that.' But that's not actually what they're going to get… What you got looks like a pretty thinned-out drab version of what [the winning consortia] promised, because what they promised in the pictures was not what they were offering. Their offer was in the written document."

In this example, the individuals and agencies that decide on the purchase may not be choosing the best outcome for a building that has to serve the public's need. Denton, says, "By and large most developers are looking for image, buying image—they're buying their iconic towers. You do have architects that are very good at doing iconic towers for very low fees. I don't think they do too much drawing. They just get the builders to build something that looks like what they've drawn."

Moral hazard is a form of opportunism created because an agent's actions are not fully observable, so the person taking them may choose to pursue her private interests at others' expense (Milgrom and Roberts, 1992: 167). Buyers may end up paying in excess of their original expectations and sellers may find that they are unable to quote a realistic fee for their services.

An example can be seen in architectural design. Michael Trudgeon, the director of Crowd Productions, notes that within architectural design, suppliers may quote a low fee initially based on a weakly specified design—to win business—and then increase fees based on changes to specification. Lamenting this practice and the challenges it poses for his business, Trudgeon made the following observation: "So the idea is that you give them the wrong design, and then you start documenting and then they go, 'this is not what we want,' and you go, 'fine we'll start charging for variation'. So then you've given them an amount to design the building at $50,000. But in fact it will cost $150,000 because the rest of it—the other $100,000—is variation. That's actually a model used by professional practices in this country, the variation model. The idea is that you underquote, and you know that you're underquoting, so you beat off the competition. The client says, 'oh my god you're so cheap and you're a big firm, you've got a great reputation, we'll use you.' We have to work against a very entrenched model."

Nectar Efkarpidis of Molonglo Group views incomplete contract specifications as being a largely endemic feature of the market for design and important to producing high quality outcomes. In wide ranging discussion on this topic, Efkarpidis offered several examples:

"'It's impossible—no matter how good the design team is, no matter how good we are at predicting the future, needs and wants—there's no way to do that with perfect knowledge at the beginning before you start construction.

"We build buildings, we design them, take them through the planning process, there's a line drawn, buster that's it. You don't take it through the design development process before you hand the documentation to the trades and builder and you've got to stop it at that point.

"You need to have the capacity to continue to evolve design. And you need to have the right group of people, stakeholders who have all got their own level of risk, to be involved and comfortable with continuing to evolve design.

"There were six different schemes for the ground floor of the hotel that we developed up over three years and tore up. People thought I was mad. I paid the fees, it wasn't right—and not because any of the six previous schemes was bad but because design is iterative.

"We had a problem with another practice who we dismissed in the end because they weren't truly collaborating in a way that we wanted them to. And they're a great practice, a really great practice. But we took the view that if they're not prepared to collaborate and accept the messiness of what design is, then they just didn't fit what we're trying to do."

Theme 3: Sellers resort to multi-layered strategies to overcome the challenges of transacting in the market for design

In the previous subsection, we showed that the market for design is fraught with a range of appropriation, disclosure and agency concerns for both sellers and buyers. Here, we focus on the strategies adopted by sellers to deal with these challenges.

Economic theory suggests that in the absence of strong intellectual property rights, two differing forms of transaction may emerge:

- The risks inherent in disclosure can induce firms away from cooperation and towards product market competition; or
- The industry may reach equilibrium of cooperation where firms engage in ideas-trading that is reputation-based (Gans and Stern, 2003).

We see some evidence of product market competition; for example, large engineering consultancies are increasingly integrating architectural activities to compete with smaller architecture firms. However, in the area of high-design our interviewees (both sellers and buyers) suggest that reputation and related signals play an important role as proxy for the quality of design services, enabling trade between firms.

In this subsection we summarise how interviewees view the role of signals in addressing the problems of an imperfect market and in supporting the marketing of high-design. We classify the signals deployed by sellers into five categories, which we call 'the five R's':

1. **Rigou**r—actions that indicate the seller is committed to high level of effort
2. **Rhetoric**—actions that demonstrate the seller's expertise and design philosophy
3. **Rating**—external validation of the seller's ability, skill or prestige
4. **Roster**—quality and prestige of prior clients
5. **Referral**—a valued recommendation from a reliable source or indirect tie

1. Rigour—actions that indicate the seller is committed to high level of effort

We employ the term 'rigour' to refer to signals the seller uses to communicate robustness of their design process including meticulous attention to detail and responsiveness to the buyer's inputs.

For 'insiders' within a design industry and for sophisticated buyers a seller's rigour may be evident in the quality of the artefact. This means that a seller's reputation may be based on pure skill; independent of the perspective they bring to the market or the endorsements of others. Broached Commissions has adopted a strategy of presenting design in a gallery context to demonstrate high-quality making to potential buyers. He recalls the public response to one of these exhibitions: "The people making the pieces were the most highly skilled artisans that we could access [and] the proof was in the pudding. When people came in to [the exhibition] some people who knew the industry skipped through the show like they normally would a show. And then I remember something like three or four times they said, 'oh my god, this is so well made are you f**king crazy. Are you crazy? That's ridiculous how well made that table is. But you're never going to make money on that. Ever.'… The market is not in a habit of paying for things that are that well made."

Demonstrations of rigour appear to have two benefits: first as an assurance of quality of outcome, second as an indicator of the need to involve the designer early in the project.

Crowd Productions use the term 'strategic design' to describe how they express their rigour as a means to be involved in early-stage strategic planning. As Michael Trudgeon of Crowd Productions notes, "In the strategic design model what we're selling is really our ability to design and that's going to produce physical outcomes. But we're also selling the process, and you make sure that there are parts of the process that are very difficult to copy effectively."

Trudgeon further elaborates: "The design is the design of everything: the design of how you ask the questions, the design of the research program, in our case the design of the prototyping program, the design of the engagement, how all that data is collected, how it is then formally organized into a reverse

brief, so the design of the communication, then how that is reflected upon and synthesised into a more physical, tangible design, which is then further tested and rolled out in a designed process."

In interview, Trudgeon offered his perspective on the nascent market for strategic design. We interpret several of his arguments as follows: Crowd Production's methods for demonstrating rigour are key to both the firm's competitive differentiation and it's ability to protect against imitation by rivals and prospective buyers. Given the extent to which Crowd freely describes its design methodology, the firm is betting strongly on the firm-specific nature of rigour in the design process to protect their approach. First, the design process alone is insufficient, as experience matters: the accumulation of design experience over the long run is seen as critical to its successful application[9]. Second, the process is envisioned to be highly opaque,[10] due to what Trudgeon describes as the "inherently chaotic" nature of the creative process; the critical elements of this process may remain tacit and obscured even for insiders of the firm. Trudgeon states, "you have to buy particular expertise to copy them, and they're also fraught markets where that expertise is not uniformly able to deliver."

From Trudgeon's perspective, persuading prospects and clients of the importance of the firms' design process is necessary to ensure an optimum design outcome—and to ensure that Crowd Productions captures more of the value from addressing the client's needs. "The irony is that we've come to believe that strategy is central in order to make the investment in design optimal, for everybody. But actually what we want to do is design stuff. At the end of the day, when the workshops are done and we've agreed what the bank of the future is going to be, that's when we get excited."

Crowd Productions has developed strong signals of rigour as a means of growing business by attracting large corporate buyers whose risk aversion leads them to being less price-sensitive. Trudgeon commented, "It's turned out that strategic design is saleable to those organizations that have a lot of resources, looked at lots of options, have got people that have spent a lot of time doing internal research and have come to the conclusion that this is what they need. But they haven't spent a career doing it and they don't want to get nailed."

In these circumstances clear evidence of rigour is seen as being central to the ability to maintain strong margins: "We're trying to invent a new structure to deal with the issue of high fees at the front end and the fact that you're investing in an IP process that you have no access to; and that is to construct a three-tiered fee system, where we're delivering a service, not a product, and we're engaged over a period of time."

For one client, the National Australia Bank, Crowd Productions succeeded in getting NAB to adopt a workshop-based prototyping design process. The bank has subsequently institutionalised this process through the creation of an internal User Experience Prototyping Lab. NAB became convinced that in order to achieve the design outcome it was looking for, it needed to adopt Crowd Production's process.

NAB's Customer Experience Manager, Louise Long, who was a brand manager at the time, says of the initial prototyping exercise, "Yes that exercise was valuable and yes that directly influenced my way of thinking about it. Did I understand then as I understand now that what Michael was doing was introducing a design principle of iteration to the brand? No. Do I understand that now? Yes."

Today, Long reflects on the factors that guide her selection of external design agencies: "For me, I spent a lot of time thinking about how I build my team's capability, and its almost always from external influences—how do I bring the outside in to the company." She places high value on how "adaptable and open" a seller will be in bringing design into a corporate environment. With the aim to build a stronger internal design capability, Long looks to external design agencies. She says that in selecting suppliers she relies "a bit on reputation" and "a lot on methodology; so what methods they use and how much integrity there is in those methods".

---

[9] One plausible explanation is that new entrants are hindered by time-compression diseconomies (Dierickx et al., 1989).

[10] The strategic value of opaque assets is described by Vicente-Lorente (2001).

National Australia Bank Limited (NAB)

NAB is one of the four large Australian banks.

NAB has a long-standing commitment to deploying design to enhance the retail experience and the working environment of NAB employees. In 2006 NAB embarked on an initiative to develop a new branch design, with a strong customer focus, leveraging retail design principles. More recently, NAB has unveiled a new prototype design retail store at its Docklands headquarters in Melbourne. In addition, the recently opened NAB headquarters was recognised with two 2014 Victorian Architecture Awards by the Australian Institute of Architects: Commercial Architecture Award and Interior Architecture Award.

2. Rhetoric—actions that demonstrate the seller's expertise and design philosophy

Interviewees regularly pointed to the need to share their perspective with the market—to explain what they knew and what they believed to be true about design and the design process. While the term IP is commonly given to describe what firms produce, many interviewees spoke about IP when articulating the value of *what they know* and their sense of the risks in revealing their knowledge/perspective to the market.

In the case of Crowd Productions, their sharing of design philosophy enables the seller to be engaged in the early stages of the decision process leading up to a design brief. The brief is a very important milestone as it defines how the business needs of the buyer are to be articulated within the design. For the seller, early involvement may provide the opportunity to add and capture value. Trudgeon says, "the innovation for us was that after a period of time we started realizing that if we extended that conversation [around the prototyping process] to the client as well, we were beginning to get an enormous crunch of 'data and making' jammed into the one thing… The narrative became a critical part of the process – managing the narrative and getting people into a room to feel comfortable about this."

From a policy perspective, this suggests the need to revisit how we interpret the risk for firms of revealing early-stage ideas that are subject to weak or no protection. In weak IP environments, it may be preferable for actors to reveal some intellectual property (e.g. design philosophy, design process, strategic insights) as a mechanism for signalling commitment towards delivering an outcome of high quality.

Conversely, it may be an important signal of quality to buyers that sellers respect the proprietary value of design knowledge. For example, as noted below on the importance of *Rating* from informed sources, Aesop's Dennis Paphitis was originally introduced to Henry Wilson through an article in *The New York Times* on the designer's work. Paphitis in interview highlights Wilson's qualifications from a preeminent Dutch design school as an important indicator of their aligned values. Of the course Wilson undertook, he observes: "I think in the first semester there is a unit of respect that every student is obliged to undertake: it's respect for what design delivers, respect for materials, respect for the environment, respect for the institution and so on." The element of respect extends naturally into consideration of design as intellectual property. "They work very closely with the students in terms of protecting their IP rights, because the graduate show that they do each year is attended by industry heavyweights and it's easy to take a vulnerable green student and have them on."

For sellers, rhetoric can be accompanied with a keen sense of the need to add value for buyers and capture value from them. Barrie Barton reflects that Right Angle Studio's city guides have been operating for nine years, at times at a private loss, due to a choice at startup to make the content freely available. The rhetoric of openness has been important to Right Angle Studio. Barton says, "we don't charge a subscription fee, anyone can read them. The way we make our money is by selling advertising that sits as part of the overall web experience." Barton states that the decision is one that he has agonized over: "The consequence of making things too easily available—whether they be free or at a diminishing price— is that people take them for granted. That's the kick… I don't believe that all information should be free. I don't believe that open source should be the default position for any person with an idea. I am deeply suspicious of collaboration; I think it's a trend. It's not a gimmick, but I don't believe that it should

be the default position for any creative project; you have to really collaborate with care. I believe, wholeheartedly, that if you invest time in producing a product, if that product is good, you should be remunerated fairly for it. And I see that not happen."

Nevertheless, he says, the benefit of openness to Right Angle Studio is clear in the extent to which the firm has been able to leverage its content and audience to demonstrate to prospects—especially to developers and local governments—its ability to engage and curate 'grassroots' communities. A free email newsletter led to the commission from Tourism Victoria to develop The Lost and Found Hotel, which in turn attracted the interest of Efkarpidis and Molonglo Group, who engaged the firm to act as 'brand custodians' of the Hotel Hotel development. This would mean directing the graphic design teams, the publicist, the in-room designers and the general manager.

Lou Weis of Broached Commissions, who was also engaged by Molonglo Group in a capacity as creative director for the design of furniture, explains Efkarpidis' motivation in selecting the designers he worked with: "What an entrepreneur like a property developer wants is to know that there's going to be a community around what they make; because, if they want to retain a certain a number of apartments, retain ownership, go into a joint venture with hospitality people, own a certain percentage of all the restaurants of their precinct and get cash flow that way, well they want to know there's going to be a community there." Efkarpidis was intent in developing the NewActon site to engage the community of Canberra around a coherent narrative, to galvanize the community around content and initiate a social dialogue on the importance of place. Weis says that a client like Nectar "can see without a whole lot of external validation a [seller's] commitment to process and a capacity to collaborate and to build community". Broached Commissions contributed to forming the narrative through research into the heritage site and the migration of the Efkarpidis family to Canberra. This allowed Weis to develop rhetoric towards his client that incorporated both the community concerns and the historical narrative that Molonglo Group has subsequently utilized in its own communication to stakeholders.

Firms that possess a design capability can in this sense be selected for their capacity to act as 'interpreters' of local and global niche markets. A parallel logic is conveyed in Aesop's use of an expanding roster of architects and industrial designers to implement a highly customized market entry strategy. Founder, Dennis Paphitis says, "there's a design vocabulary that we've tried to establish that is specific to [each of the] the regions we trade in." He continues, "Not every store is equally significant in terms of its profile. For example, when we began in Germany it was very important that we began in Berlin, [that] we began in a particular neighbourhood in Berlin, and that we began with a particular type of practice because it would frame the way that we were perceived in that market."

3. Rating—external validation of the seller's ability, skill or prestige

We use the term ratings to refer to external endorsements of the quality of design. These endorsements come in several forms, typically: from winning contests or awards, or from having design outcomes included in collections—by galleries for example. As with other signals, rating of this kind can provide an important indicator of quality.

Several interviewees offered a perspective that ratings are important not only to winning ongoing work but in building internal capability.

Industrial designer Henry Wilson offered this insight: "I initially got respected through design awards, which were industry awards that people saw and that garnered some kind of in-house respect among professionals. Product of mine started to be used in fitouts [store interiors]; from there, people became more interested in the concept I applied to design and from that other jobs came."

Wilson traces the growth of his early career from winning the Bombay Sapphire Design Discovery Award: "They made quite an effort to project from a PR point-of-view the products in the award. It was strictly a product design award – furniture, object and lighting… They would fly you to Milan to exhibit at the furniture fair—that was probably more of a Bombay Sapphire junket. And they gave you $30,000.... If you had all your ducks in a row you could launch a product from something like that—even if you weren't a winner, you were in a runner-up position."

The significance of the award to Wilson's career was that it allowed him to commercialize his 'A-joint' product: "Winning the money allowed me to tool-up for that and put it into production."

John Denton offers a parallel perspective. For Denton Corker Marshall contests have played an important role—directly, as a source of new business, and indirectly in developing the firm's capabilities and providing a signal of those capabilities.

"With a lot of enquiries, you get this proof of experience: have you done any high rise residential? And if you haven't then the line goes dead. A lot of it is how you build up. It's very hard to build up your practice in architecture, because you start out and you get a house for your uncle, or this or that, then you're doing houses. How do you get a bigger building? We did that through [participating in] competitions."

Denton continues: "Competitions are a very significant part of what's built our reputation, and it's a significant part of what's income for us. I imagine we've probably won [a large sum of revenue through contests] and that in turn has got us other work as a result."

Awards may be read as an indicator that the firm has invested in specific types of expertise that translate into a market-relevant capability, as these contests are usually organized by government or commercial clients who intend to realize the design in construction.

"I think our skills have always been to be able to design fast and efficiently, and techniques that you learn to win competitions," says Denton. "It's about producing a narrative that gets them in, explains it to them, draws them in to it and makes them find, when they read through the narrative of what your design is about, that what you have offered them is an inevitable outcome."

Formal awards are a clear indication of the importance of institutional interventions that are alternative, and potentially complementary to IP policy in supporting the market for design.

Our definition of 'ratings' broadly encompasses any form of recognition from dependable sources. For example, when Alice Rawsthorn OBE, a leading British design critic, reviewed Henry Wilson's work for *The New York Times*, it had a direct impact on his ability to attract Aesop as a client. Wilson notes that Aesop's Dennis Paphitis "watched that column and knows Alice quite well". Wilson recounts his initial introduction to Paphitis: "I was in Melbourne in a different store [to Aesop]—he has a store called Épatant. I was ordering something and I was chatting with someone behind the desk [who] took my name down and then I mentioned my name. He spun around and was like, 'Oh, Henry Wilson, I thought I recognized you from the article. Have you got a minute to chat?'"

Lou Weis from Broached Commissions suggests that for his business, a key challenge is to "pull together the external validation" required to reinforce the prestige value of the brand in the market. "In the high-design space, our sales mechanisms are constructed in a similar way as the art market. The art market sells itself through the support and validation of product by external experts, who are called curators, from public institutions who are supposedly impartial… All of that elevates their stature and puts more pressure on the scarcity[11] value of the objects shown within the gallery. We have a similar structure."

With respect to IP, Weis observes, "ironically… when you present something that is intentionally unusual in the marketplace, it wouldn't be such a bad thing if it was copied. It would develop notoriety. Is it terrible for Louis Vuitton that they're ripped off mercilessly? It doesn't seem to be. Of course, it would be better for their bottom line if every bag in the world were a genuine Louis Vuitton. But you would also have to say—I don't know if this is backed up by numbers—that it's an enormous boon to the prestige of a luxury brand that people feel the need to copy it. Depending on which part of the market you occupy, I think, to a certain extent determines the damage caused."[12] Seen from this perspective, the degree of imitation may also be an indicator of a designer's rating.

---

[11] Future research is required to disentangle the effect on economic versus cultural scarcity.

12 Raustiala, K., & Sprigman, C. J. (2014). How Can Brands Flourish in the Knockoff Kingdom? What China Tells Us About the Bad–And Good–Effects of Luxury Goods Counterfeiting. Forthcoming in: Beebe, Sun & Sunder (eds.), The Luxury Economy and Intellectual Property: Critical Reflections, NYU Law and Economics Research Paper No. 14-10.

4. Roster—quality and prestige of prior clients

Designers frequently rely on their roster of clients as a signal of their capabilities and the quality of the work they can achieve.

Dennis Paphitis from Aesop observes, "there's one firm that we've done work with and we're very close to… We did 13 projects with those guys, beginning in Melbourne, Adelaide, Singapore, New York, Paris, Zurich, Geneva. We really helped them establish themselves. It's of enormous value to them the exposure that they've generated… [The design firm] subsequently did another big-ticket job in Paris, they were approached by a very large watch firm, and tendered on something else for Switzerland. They were talented and they were on their way to doing something. This just helped accelerate that in a fixed period of time."

Early-stage designers tend to focus on building their roster as a signal of quality. For many budding designers, Aesop is an excellent addition to their client roster. Paphitis says, "the purpose of doing a job for Aesop is not that it will be the most lucrative job. It's certainly fairly paid and it's above industry measures in most instances. But our overall budgets are quite tight for a store… What I say to our commercial managers is, what are you giving these guys in return? ... I think they get something different out of it: it's the association, the shared learning, the kudos, the exposure they get and the other jobs."

"What we have now are lists of architects and lists of designers that approach us every day, who kind of feel that there's a caché in doing something for us because it would be nice on their CV."

Established designers may adapt their business to reflect a more selective roster of clients. Renowned architect John Denton recalls that by 2000 his firm had established sufficient reputation internationally, so it could begin relying on its global headquarters for design and scale down its offices overseas. By around 2001 the firm had closed its offices in Hong Kong, Singapore and Kuala Lumpur. Denton says, "we found that we could stop having to go out and sell ourselves; the work would just come to us."

The firm's contraction was simultaneously a response to its need to focus on the rigour of its high-design approach. "You learn that you've got to accept that the firm is going to shrink a bit because the right work is not there, rather than cutting fees and chasing work in order to maintain turnover, because I think that's the dangerous bit. You'll always respond to fluctuations, but we've made the decision that we'll shrink rather than take on the stuff that's silly to take on."

"We continue to do small jobs [including] the occasional house for friends or clients… When I say a house, they're normally AUD3 million, or thereabouts. We can't really afford to do AUD3 million jobs, the size of our office means we really need to start at about AUD10 million for a project. But we will do these AUD3 million jobs, one a year, because they're very interesting jobs to do, particularly for the staff to get involved in."

Apart from size, the prestige and rarity of certain projects are important elements that characterise the client roster. "We've just finished the new exhibition visitors centre at Stonehenge in the UK. You do that because that's an important image project and a really interesting project to do," says Denton. "It helps with the marketing because architects tend to get known, by and large, [for] the smaller projects. We'll get no more for Stonehenge than we do for an office building… We'll get more kudos and better known for Stonehenge."

This illustration of the careful choice by a seller of signature projects and clients evokes the complex intersection of design industries and the cultural economy. Here, selling design exhibits tensions that are often described in the commercialization of fine arts.

Lou Weis reflects on the challenges for Broached Commissions in implementing a business model that will support a viable design practice. In his words, "high-design at its most crude is the description of a price point." It is also "an idea that is not committed to mass production". However, Weis' view of the pre-eminent contemporary product designers, among them Marc Newson, Marcel Wanders, Philippe Starck, and how they have developed their practices into commercially successful firms, suggests that industrial production does play a considerable role, particularly where designs are out-licensed for a royalty fee: "They do interiors; they do product for royalty commission, so they basically take a royalty fee on the wholesale price; they do limited edition; and they do joint venture, where they co-invest in the realization of a product and therefore get a much higher royalty because they've got skin in the game."

5. Referral—a valued recommendation from a reliable source or indirect tie

The endorsement of a designer's work by prior clients or associates helps designers overcome some of the challenges inherent in the market for design. In scenarios where there is some risk or potential for moral hazard, referrals may substitute for the repeated games through which trading parties have been shown to develop trust in the market for technology (Jensen, Palangkaraya and Webster, 2013).

Lou Weis explains how Broached Commissions came into first contact with Molonglo Group's director, Nectar Efkarpidis. "[An Australian photographer] was photographing for Nectar and told him about us. And then I think he saw us in the Australian Financial Review Magazine… Interestingly, he was the one who forced his architects, or kind of insisted they come down and see our work [at the Broached Commissions gallery exhibit]."

A referral may not be sufficient to completely overcome the information asymmetry in the market for design. Architect John Denton describes how a Chinese buyer contacted him personally to solicit his services. He had no prior contact with the potential buyer but was recommended by one of his former associates. When the Chinese buyer telephoned him: "He said, 'I want you to design a building for me.' I said, 'I don't know who you are.' He said, 'come to China, I want you to design a building.' I said, 'send me US$5,000 and I'll come.' And he did. Now we've built 40,000 apartments in China for him since 2000."

The exchange illustrates how Denton's former associate played an important role in helping overcome information asymmetry. However, for Denton there remained information asymmetry about the reputation of the buyer, and the level to which the buyer was informed of Denton's own reputation. In the absence of this knowledge, he was initially reluctant to engage with the buyer, and so the US$5,000 payment was an opportunity for the buyer to signal his seriousness to Denton.

This leads us to infer that buyers may also need to resort to multi-layered strategies to overcome the challenges of transacting in the market for design, a theme explored below. It also leads us to suggest that between buyers and sellers, signals can interact and 'flow both ways'.

Theme 4: Buyers resort to multi-layered strategies to overcome the challenges of transacting in the market for design

In this subsection we focus on buyers and the actions they use to overcome challenges when transacting with sellers. We categorize buyers' actions into four categories, or the 4 C's:

1. **Contests**—inducing sellers to reveal information competitively
2. **Co-creation**—costly participation by the buyer in the development process
3. **Curation**—choices that reveal a consistent, knowledgeable, hence desirable business partner
4. **Casting**—appointment of key personnel to specific roles

These four mechanisms are important as they help a buyer to mitigate some of the concerns and fears of potential partners. Industrial designer Henry Wilson suggests that in the presale period, without effective signalling from the buyer, a seller enters negotiations without knowing whether the buyer is informed of the cost for design quality and this exposes the seller to risk:

> "They don't know what it's going to cost. You don't know what they're willing to throw at it. You can sit them down and wow them in front of a [design illustration], but that's going to cost you a lot of money."

1. Contests—inducing sellers to reveal information competitively

As previously discussed, it is difficult for a buyer at the time of purchase to assess the quality of the design product/service that would ultimately be delivered. This stands in contrast to other markets for ideas where strong intellectual property rights enable buyers and sellers to have some assurance over the transaction. Contests are one mechanism by which these costs and risks are mitigated.

Contests, competitions and the awarding of prizes feature prominently in our interviews. Contests are perceived to offer buyers an opportunity to reduce information asymmetry. Participation in contests requires sellers to reveal information and allows buyers to compare across sellers.

Our interview with John Denton suggests that how a buyer structures a contest may provide important signals to the seller. In architecture, some contests have the added element of a preliminary payment for sellers, covering the basic costs of initial design development. Denton says, "we only enter competitions where they pay you... You submit a thing to show how good you are, what sort of work you do, they shortlist five firms, they pay each of the firms, normally about $50,000 to do an entry and you do a concept. Then you present it, they choose one and the person gets the job and goes ahead."

An informed seller may be competent in 'reading' the buyer's level of commitment to funding and executing upon designs entered into a contest. Denton says, "most people entering competitions, they don't really think about how they are going to win it. We have a checklist for competitions: are they actually going to build the building; who are the judges—if there are no architects on the judges panel you wouldn't even bother; is the client real; is it a good building; how much are they paying. If you get through that checklist and it gets all the ticks then it's worth going in for."

This skill is important because contests carry risks as participants are commonly required to assign intellectual property to the client or contest organizer, who in turn may contract using these designs with other firms or consortia (including competitors) for implementation. Sophisticated sellers are aware of how buyers use contests, and look to develop an ability to provide relevant signals. Denton observed that to win awards was important to their success and subsequently his firm has developed a capability in contests: "I think our skills have always been to be able to design fast and efficiently. And techniques that you learn to win competitions."

2. Co-creation—costly participation by the buyer in the development process

To overcome problems of moral hazard, a buyer may look to frame their role as co-creator and not just as a source of revenue for sellers.

Nectar Efkarpidis from Molonglo Group outlines the intense client involvement involved in the development of Hotel Hotel, Canberra. "I was involved in every aspect, from thinking about the hotel name and the branding and what that represents all the way through—we've had more than 60 designer-makers craft every part of that hotel."

In Efkarpidis' words, one of the keys to the firm's competitive advantage is its capacity "to continue to ensure that the projects we undertake are the ones that have the authenticity, the excitement and the capacity for the creative to flourish. That is probably the most potent because once you have them invested in a project, it's not about the fees that you pay them. It's not about monetary compensation. Those guys will work 24 hours [per day], even if their fee was to work until 8pm. I know our teams *work*, we agree [on] fees and they're fixed fees, but we know they work more. They're prepared to do that because they know we're not going to give up. We're not going to destroy their dream; we're not going to dilute it. That's what gives us credibility, that's what gives us capacity to continue to do it and I think that's what's defensible. Because, unless you are that way, you can hire all these people, but if you're not going to be there, all you're going to do is pay them money, those people aren't going to give that."

The potency of co-creation rests on the degree to which it is costly to the buyer. Co-creation can mean an intense and personal involvement of the client investing time and effort in the design process. As an initial signal, a sophisticated buyer will give a relatively open-ended design brief, offering a "broad church" that gives direction while allowing the seller to express and participate in defining the final outcome.

To illustrate the costly nature of co-creation, Efkarpidis describes the challenge of inspiring good work from external talent: "You have to go through the process of working with an artist 35 times before you know what it's like; you've got to make sure you treat them this way or they get pissed off; if they get pissed off they don't want to turn up to work and they don't produce good work."

Sellers looking to differentiate themselves via high-design actively look for buyers that are co-creators. Lou Weis from Broached Commissions, a design supplier for Molonglo Group on the Hotel Hotel development, suggests that Molonglo Group's director Nectar Efkarpidis is, in many, ways, "an ideal

client, more ideal than someone that just writes a cheque and says, 'do whatever you want,' because we're not artists we're designers and we respond to a [design] brief. He had a big, big brief. And a very established vision of what he wanted but it was a broad church. And he was open to us to rebel against that vision or fit within it in one capacity. So it was an intellectual conversation from the beginning, and that is exactly what Broached was set up to do."

Weis emphasises the role a buyer plays in the design process as co-creator and hence his sensitivity to signals that the buyer is committed to the process. Weis says, "If they say, we're interested in Art Deco combined with Cronenberg, the filmmaker, we would dive into that and then show them a concept document and have a conversation about that, and then start designing and have a conversation about that, then deliver an outcome. We're interested in doing works that are radical and therefore it's a bit much to assume that we can just go off and make something without them freaking out, unless they're willing to go along on the development journey with us."

Weis describes an example where a client, in contrast, did not recognize the merit of being a co-creator. "We were commissioned recently by an architecture firm to come up with the signature pieces of a foyer for a large building. And what I quickly realized, from the speed of the briefing—and it's a big building— was that they're not in the habit of a circular design conversation... They're just like, 'no, we've got this much floor-play and we want you to fill it with something; we move at a pace and a commercial decisiveness that doesn't incorporate conversation'. That's very difficult for us."

A buyer who wants to be a co-creator has to invest in relevant knowledge, which manifests itself in the buyer's choices and activities. Industrial designer Henry Wilson describes one form of relevant knowledge, that of good `taste'. Wilson says of Aesop's founder Dennis Paphitis, "he's got good taste… I see taste as being a training of the eye. Like someone could pick up a glass of wine, smell it and tell which region of France it's from, that comes from knowledge and drinking a lot of wine. I think Dennis has a lot of knowledge and has executed a lot of stores. Part of his ability to foresee how things are going to happen is just having a well-trained palette… He picks people that he gets along with, and its usually a multiple-level thing, whether its sitting down having a meal and a glass of wine, whether their philosophy aligns with Aesop, and nurturing some kind of outcome out of that."

Wilson points to the trade-offs that a seller can be willing to make to work with a buyer who engages as co-creator: "Some of the best projects, even working for Aesop, the best quality design is not necessarily the best price. Some opportunities come that don't pay particularly well, but often following in the wake of that, the reputation is the high-design part, the bit where you get paid."

3. Curation—choices that reveal a consistent, knowledgeable and desirable business partner

We observe among interviewees a pattern of behaviour sometimes emerges where a buyer amasses collections of artifacts and interests that reflect good taste. This is one way to signal sophistication, knowledge or genuine interest in design, and can affect how a seller behaves within a transaction.

Nectar Efkarpidis recalls that for Hotel Hotel he invested in acquiring a rare collection of ceramics by a famous Australian artist, curated to be part of the 'high-design' collection prominently featured at the hotel. According to Efkarpidis, "there's a tiled wall in the hotel. It's a Gerard Havekes, who's a Dutch émigré to Australia. He died a few years ago and he's got three daughters. We spent a lot of time negotiating to buy his ceramics works. They wanted to know it was going to go to the right place. It was an introduction through Ken Neale and Don Cameron, our filmmaker. [The Havekes family] didn't care what we paid for it. They said, 'We don't want to sell it to you if all you're going to do is treat it like decoration.' We had to show them that we were going to respect his work in a very sensitive way."

Efkarpidis managed to persuade the family to sell him the collection by showcasing design and art works that Molonglo Group had incorporated in the past and, importantly, who else the company had previously worked with: He purchased them "by going to them, showing them what we've done, who we've worked with previously, the work that we've done previously and assuring them we'll consult with them at the time that we decide to put them up".

The importance of curation is not only recognized with respect to trade between businesses. Within the consumer market for personal care products it also matters. One component of Aesop's market entry strategy is to partner with carefully selected restaurants, bars, cafes and hotels—Molonglo Group's Hotel

Hotel included—to feature Aesop's personal care products in their restrooms. Paphitis refers to this as Aesop's own "silent version of a Michelin food guide". The company's curatorial stance drives referral as people respond to the company on the basis of apparent shared sensibilities: "People say, 'oh I see Aesop everywhere! I was in this cafe and then I went there.' Yeah, but it's a very tight catchment that you move in and there's this whole other catchment of people that don't… They're all little pointers to going where we go."

For Lou Weis of Broached Commissions, the significance of curatorship is more literally a case of having work juxtaposed against that of other exhibiting artists and designers. Weis has invested in accessing the international art and design touring market, having work curated at shows in prestigious museums, including one recently in China. According to Weis, "everyone goes, oh my god, these guys are showing in Beijing at the most prestigious museum in the country, and Ai Weiwei was in a show next door at the same time. Therefore, the provenance of the works being bought by collectors locally is seen to increase in value. The international kudos is that we were able to show potential Chinese clients through and we now have a contract to be designing furniture for a local manufacturer in China."

For the seller, curation may facilitate the formation of networks important to future projects. Through the Hotel Hotel development, Right Angle Studio met a renowned Australian interior designer and filmmaker who subsequently went on to help in setting up Right Angle's recent independent venture, The Golden Age Cinema and Bar. However, as Barton states, the benefits of curation for sellers capturing value from design may be stronger for sellers who produce tangible design artefacts: "It doesn't hurt our reputation to be associated with the [Hotel Hotel] project but we're not represented forcefully enough to turn it into a material business advantage."

4. Casting—appointment of key personnel to specific roles

Several interviewees described situations where the buyer attracted or appointed "the right" individuals to defined roles. This activity, which we refer to as 'casting', plays an important role in reducing the risks inherent in information asymmetry.

Through casting, a buyer can lessen the potential for moral hazard on a seller's part.

Nectar Efkarpidis of Molonglo Group discusses the role of assessment in carefully selecting suitable individuals. Efkarpidis says, "we're thinking about how we develop up the kind of assessment process of those individuals, not [in terms of their] capacity to create but [assessing] those people as people: Do they have integrity? Will they do the right thing when things are difficult? What will they do? They're the things that matter to us."

According to Efkarpidis, in "building competitive advantage and holding it" the first strategy that Molonglo Group adopts is to "ensure that the people are right and that those people are vested, because we don't want an agency relationship. By that, I mean we don't want the people who have control but no outcome to have control."

"I think reputation is the one thing that we look at and evaluate about a creative supply firm, and the work that they've previously done, in order to evaluate whether they're good enough to undertake the new work, previous to having a relationship with them."

"If we're to continue in this business, and to continue to do great things, particularly at a design level – at a creative level – we feel the first thing we're going to be doing is spending a lot more time picking people within [partner] companies… And for me, at a contractual level, where we start to protect ourselves, those people are bound."

Another dimension of 'casting' is the importance of building and updating an appropriate roster of external designers to work with, and this may involve costly signals of commitment. Louise Long of National Australia Bank emphasises her actions as the buyer's representative and the importance of her endorsement of chosen suppliers for them to work effectively within the roles they are cast.

Lastly, casting can be used to signal credibility and trustworthiness, for example by cementing ties to a community that has the power to enforce costly social sanctions in the case of transgressions.

Aesop's casting and treatment of design service providers is consciously managed to create signals that the brand is invested in its relationship to the creative communities from which it draws talent. Dennis Paphitis says, with respect to the company's sourcing strategy, "If we manage that in the right way then it's mutually beneficial because that is a significant segment of our demographic; the arts community, the graphics community, the architectural community, they are meaningful customers for us. So, if we are seen as an ally rather than as an exploiter, why wouldn't we do it?"

Paphitis says of Aesop's experience, "the first store in a new market will always take longer and cost more. So when you've gone through the learning curve and the pain of that why wouldn't you work with these guys a second time or a third time?" For Paphitis, part of building an alliance position is being aware that Aesop's partners will over time change where they sit within the lifecycle of capability development and reputation growth.

In the next section, we turn from a review of findings to consider the implications from our study.

4. Discussion and links to policy

The aim of our study was to provide insights into how the market for design operates. We explored this issue through a series of interviews with market participants. We selected interviewees who, from their significant experience, were well placed to provide an informed insight into the market. We also sought to ensure that as a group the interviewees represented a good balance between buyers and sellers, and captured the span of the design market. Interviewees included product and service retailers, architects, landscape designers, furniture designers and commercial developers.

We report on seven in-depth formal interviews. Our research also involved triangulation through informal interviews with a broader, targeted field of market participants. A survey methodology (i.e., mail or phone questionnaire) would have enabled us to capture data on a larger sample but would not have provided the flexibility needed for our research goals. An in-depth interviewing methodology offers several important advantages over large-scale surveys. First, it fits well with the exploratory nature of our research: our goal was to understand how the market operates, rather than test a model of market behaviour. To this end, semi-structured interviews were useful in ensuring that each informant was free to identify how they saw the market operating and to articulate their perception of market mechanisms. Second, we had the flexibility to tease out and probe issues raised by interviewees. This was an important methodological advantage over surveying as it ensured that we were able to focus on the issues that interviewees deemed to be most salient. Third, the interviewing process allowed us to incorporate issues as they emerged across interviews: themes that emerged in earlier interviews informed the discussions we had in subsequent interviews.

Our interviews offer several key insights: (1) Formal protection of intellectual property rights plays a limited role. (2) Weak intellectual property rights impede the market for design. (3) Sellers resort to multi-layered strategies to overcome the challenges of transacting in the market for design. (4) Buyers resort to multi-layered strategies to overcome challenges in transacting.

Interviewees consistently emphasise the value of design. Yet, the protections afforded by design rights and other intellectual property rights are not perceived as being of central relevance to their business activities. This perception is consistent with a puzzle identified at the start of our study: while design has assumed increased importance as an economic activity, this growth in importance is not reflected by strong growth in overall design applications.

One factor contributing to the limited perceived relevance of intellectual property rights is that design is commonly sold as a service rather than simply as an artifact. Design rights protect the artifact—*'the features of shape, configuration, pattern or ornamentation which gives a product a unique appearance'*. When design is a service, the artifact only becomes fully manifest after the two parties have contracted.

Strong IP rights allow sellers to reveal their offer more fully, knowing that they are protected against the value being appropriated. The usefulness of IP in this manner is established in prior research.[13] It would appear that in the market for design, this benefit of formal protection is of limited relevance. Interviewees were broadly of the view that design is a service that is typically co-created with the client. As the buyer and seller have to work together to produce a strong design outcome, factors other than strong IP protection come to the fore. Moreover, our interviews indicate that market participants must relay a significant amount of information about their work to the market in order to attract higher quality clients.

Sellers and buyers have each developed a range of strategies to operate in a market where formal protections are perceived to be weak or of limited relevance. In particular, we find that both sellers and buyers provide and seek reputational signals as a means of overcoming the challenges of transacting in the market for design.

---

[13] Various authors discuss the impact of intellectual property on appropriation (Gans and Stern, 2003; Agrawal, Cockburn and Zhang, 2014), however the impact of intellectual property on each party's willingness to disclose information to partners is unsupported (de Rassenfosse, Palangkaraya and Webster, 2013).

4.1 Considerations for the Review of the Designs System

Presently, IP Australia is engaged in a comprehensive review of Australia's Designs System, led by the Advisory Council on Intellectual Property (ACIP). Our study offers a useful window into the perceptions and behaviour of market participants and may inform the 2014 ACIP Review of the Designs System.

Our interviews suggest that it is important to consider the behaviour of market participants when discussing issues that are key to the review's terms of reference, including duration, grace period, harmonization and overlap with other forms of intellectual property. For example, it is evident that in some contexts, design as an artifact becomes relevant only late in the sale of design. To this end, policies that provide for the option value of a design right, and a grace period, may contribute to a well-functioning design market.

It is clear from our engagement with market participants that there are some participants to whom the Designs System matters, and others to whom it is only of peripheral importance. While it is natural for any analysis of the Design System to focus on existing users of it, they are but a niche. The question arises whether it would be useful to engage market participants who do not perceive themselves as impacted directly by reform of the Designs System. Our research suggests that filing for design rights, and enforcing intellectual property protections, is not viewed as a primary strategic activity even by participants for whom high quality and innovative design matter a great deal. In order to engage market participants, it is important to make the process seamless and easy so as to avoid imposing costs and generating market friction.

Our interviewees were aware of the Designs System and other forms of intellectual property rights. However, due to a perceived lack of fit with their respective business models, they have made an informed decision not to engage strongly with the Designs System or its alternatives. This was a surprising observation given we interviewed major players in the Australian market for design. Thus, simply increasing awareness about design rights may not lead to its increased adoption.

For the 2014 Review of the Designs System, a question might be raised whether better education can be deployed as an effective policy instrument. This links to a broader issue: to what extent should the design system be improved to serve existing users, or adapted to become more relevant beyond that niche? In order to answer this question, it would be helpful to anchor discussion around further work that explores the segmentation of market participants. This would serve as a valuable input to articulating what net benefit (if any) would accrue to various segments of market participants from engaging with the Designs System.

Finally, our work suggests that the review should take account of the behaviours of market participants, which we have begun to characterize as the 5Rs and 4Cs. To the market participants we interviewed, design is viewed primarily as a capability and one that is co-created, so the value creation activity sits between buyer and seller and is developed over time. Success depends upon an iterative process and constant negotiation, in contrast to other markets where incentives to innovate rely upon one party being allocated monopoly rights. Because buyers and sellers adopt complex roles, their actions are shaped by norms, and not just by formal institutions, such as the IP regime. For example, we highlight the expectation of some participants we interviewed to respect the rights of others.

In a sense, these market participants view themselves as professional services firms (like consultants or solicitors) rather than producers, and this way of framing their position within the value chain is a useful starting point for policy discussions.

4.2 Broader Implications

Our interviews demonstrate that new and distinctive design transpires as an outcome of firms buying and selling design as a superior organisational routine or capability. As such, while design rights exclusively provide protection on the shape and appearance of artifacts, it is useful to reflect on how our interviewees relate to the process by which a firm develops a capability and reputation for high-design. In brief, interviewees highlight four enablers to the development of a strong design capability:

1. *Nurturing talent in design*—through experience, designers develop and enhance their capabilities; hence, early career opportunities and commissions are of major importance.
2. *Creating a narrative around design and the design process*—design is commonly bought and then made. To mitigate execution risk and signal quality, designers build strong narratives on their design philosophy and process.
3. *Gaining recognition for the quality of work completed*—recognition features prominently - through third party endorsement - as a means of building recognition.
4. *Attracting high-quality clients*—the quality of client plays a central role in providing designers with the opportunity to further enhance their capabilities and their reputation.

There is an opportunity for policy makers to consider whether all that can be done to foster development of Australian design capabilities is being done. Interviewees point to four indicators.

1. Experience—nurturing talent

Several interviewees alluded to the need to ensure that the flow of talent into design is managed – particularly the skills, and quality of young designers. While the broad availability of design courses is welcome, policymakers should consider whether there are unexploited opportunities for identifying and developing the most talented designers. Moreover, policymakers may wish to assess whether there exists an appropriate level of support for early career designers as they develop their capabilities and reputation within the market. In addition, training modules on the management of IP within the market for design may be helpful.

2. Coordination—developing an Australian design narrative

A strong narrative allows designers to articulate the quality of their design concepts and processes. While each designer tends to create a unique narrative, a strong national narrative contributes background to the work of each designer. Danish design narrative, for example, clearly benefits designers in that country. Similarly, interviewees point to the value of developing a design narrative that is relevant to Australian designers. The challenge of fostering a strong design narrative, while complex and requiring input from multiple stakeholders, clearly suggests a role for government.

3. Recognition—validating good design

Design awards, prizes and other formal recognition are important in the development of a designer's reputation. Several interviewees point to the role of governments internationally - i.e., in northern Europe - in providing high profile awards that bring recognition to early career and established designers. Policymakers should ensure that the range of design awards in the Australian market is appropriate to the task of supporting development and promotion of Australia's design capabilities.

4. Demand—serving as an informed client and shaping buyer preferences

As a consumer of design, government plays an influential role in providing demand for high design and, in doing so, provides opportunities for Australian designers to hone their capabilities and reputation. Government can contribute to supporting innovation in design by adopting consistent policies that incentivise both the creation and utilisation of high value design capabilities.

Beyond its influence as a buyer in the market for design, government contributes by shaping demand through policies targeted at buyers. Programs such as the Commonwealth Department of Industry's Design Integration Program bring together design participants from industry, government and the research sector. Again, interviewees point to the scarcity of buyers/clients in Australia who have the sensibilities to commission high-design and work with designers to produce design of the highest quality. As Lou Weis of Broached Commissions observes: "there's probably not enough pressure in the local marketplace on distinctiveness to warrant us even being here. In New York, or London, Tokyo, Beijing – megacities – how you stand out and so forth is trickier."

4.3 Next steps and conclusions

This study provides insights into the use of design by Australian firms. The study offers a useful window for policy makers to learn more about the behaviours and perceptions of market participants. It is also useful as an input to the next phase of our research, in which we aim to specify and test a series of hypotheses on how the market for design operates using a large-scale survey of firms.

Interviewees did not have strong views with regard to changes in the current IP regime beyond (a) a perception that fewer protections are available in Australia than is the case for other developed markets and (b) there is a need to ensure that red tape in applying for design rights is minimised.

While design rights are seen as playing a minor role in the market for design, there are norms of respect for the intellectual property of other parties. Any proposed change to the regime of design rights should reflect existing behaviours of market participants.

References

Adner, R. and Levinthal, D. 2001. Demand, heterogeneity and technology evolution: implications for product and process innovation. *Management Science*, 47, 611–628.

Akerlof, G. 1970. The market for "lemons": quality uncertainty and the market mechanism. *Quarterly Journal of Economics*, 84 (3), 488–500.

Agrawal, A., Cockburn, I. and Zhang, L. 2014. Deals not done: Sources of failure in the market for ideas. *Strategic Management Journal*, forthcoming. DOI: 10.1002/smj.2261.

Amara, N., Landrya, R. and Traoré, N. 2008. Managing the protection of innovations in knowledge-intensive business services. *Research Policy*, 37 (9), 1530–1547.

Arora, A. and Merges, R. P. 2004. Specialized Supply Firms, Property Rights and Firm Boundaries. *Industrial & Corporate Change* 13 (3), 451–75.

Arundel, A. 2000. Patents – the Viagra of innovation policy? *Internal Report to the Expert Group.* MERIT*.*

Bakhshi, H. and McVittie, E. 2009. Creative supply-chain linkages and innovation: do the creative industries stimulate innovation in the wider economy? *Innovation: management, policy and practice*, 11, (9), 169–189.

Bucolo, S. and King, P. 2014. *Design for Manufacturing Competitiveness.* Australian Design Integration Network (ADIN).

Brown, T. 2008. Design thinking. *Harvard Business Review*, *86* (6), 84.

Baldwin, C. Y. and Clark, K. B. 2006. Between 'knowledge' and 'the economy': notes on the scientific study of designs. In Kahin, B. and Foray, D. In *Advancing Knowledge In the Knowledge Economy*. MIT Press.

Baldwin, C. Y. and Clark, K. B. 2000. *Design rules: The power of modularity* (Vol. 1). MIT press.

Chesbrough, H. W. and Appleyard, M. M. 2007. Open innovation and strategy. *California Management Review,* 50 (1), 57–76.

Design Victoria. 2008. *Victoria's Design Sector: Five years on.* State of Victoria

de Rassenfosse, G., Palangkaraya , A. and Webster, E. 2013. *Do patents shield disclosure or assure exclusivity when transacting technology?*, IPRIA Working Paper 1/13. ISSN 1447-2317.

Dierickx, I. and Cool K. 1989. Asset stock accumulation and sustainability of competitive advantage. *Management Science,* 35(12), 1504–1511.

Dorst, K. 2011. The core of design thinking and its application. *Design Studies,* 32, 521-532.

Ethiraj, S. K., Levinthal, D. and Roy, R. R. 2008. The Dual Role of Modularity: Innovation and Imitation. *Management Science*, 54 (5), 939-955.

Ethiraj, S. K. and Zhu, D. H. 2008. Performance effects of imitative entry. *Strategic Management Journal*, 29, 797–817.

Foray, D. 2004. *Economics of knowledge*. MIT press.

Swann, P. and Birke, D. 2005. How do creativity and design enhance business performance? A framework for interpreting the evidence. *DTI Strategy Unit Think Piece*.

Fraser, H., 2011. Business Design: Becoming a Bilateral Thinker, *Rotman Magazine Winter*, 71-76.

Harhoff, D., Henkel, J. and von Hippel, E. 2003. Profiting from voluntary information spillovers- how users benefit by freely revealing their innovations. *Research Policy,* 32, 1753–1769.

Henkel, J., Baldwin, C. Y. and Shih, W. 2013. IP modularity: profiting from innovation by aligning product architecture with intellectual property. *California Management Review,* 55 (4), 65–82.

Gans, J. S. and Stern, S. 2003. The product market and the market for "ideas"- commercialization strategies for technology entrepreneurs. *Research Policy,* 32, 333–350.

Gans, J. S. and Stern, S. 2010. Is there a market for ideas? *Industrial and Corporate Change* 19, (3), 805–837.

Gans, J. S., Hsu, D. H. and Stern, S. 2002. When does start-up innovation spur the gale of creative destruction? *RAND Journal of Economics*, 33 (4), 571–586.

Gawer, A. and Cusumano, M. A. 2002. *Platform leadership*. Harvard Business School Press.

Henderson, R. M. and Clark, K. B. 1990. Architectural innovation: the reconfiguration of existing product technologies and the failure of established firms. *Administrative science quarterly*, 35, (1), 9-30.

Howkins, J. 2002. *The creative economy: How people make money from ideas*. Penguin UK.

Jensen, P.H., Palangkaraya, A. and Webster, E. (2013). "Trust, incomplete contracts and the market for technology", Melbourne Institute Working Paper 03/13.

Lockwood, T. 2009. *Design Thinking: Integrating Innovation, Customer Experience, and Brand Value.* Allworth Press.

Milgrom and Roberts. 1992, *Economics, Organization and Management*. Prentice-Hall, Inc.

Moultrie, J. and Livesey, F. 2013. Measuring design investment in firms: conceptual foundations and exploratory UK survey. *Research Policy* (forthcoming).

Pacheco-de-Almeida, G. and Zemsky, P. B. 2012. Some like It Free: Innovators' Strategic Use of Disclosure to Slow down Competition. *Strategic Management Journal* 33 (7), 773–93.

Ramello, G. B. 2005. Intellectual property and the markets of ideas. *Review of Network Economics,* 4 (2), 161–180.

Ramello, G. B. and Silva, F. 2006. Appropriating signs and meaning: the elusive economics of trademark. *Industrial and Corporate Change,* 15 (6), 937–963.

Sudjic, D. 2009. *The language of things*. Penguin UK.

Teece, D. J. 1986. Profiting from technological innovation: implications for integration, collaboration, licensing and public policy. *Research Policy*, 15 (6), 285–305.

Thompson, S., Sissons, A. and Montgomery, L. *UK design as a global industry- international trade and intellectual property*. The Big Innovation Centre, Intellectual Property Office.

Utterback, J. M. and Suárez, F. 1993. Innovation, competition and industry structure. *Research Policy,* 22, (1), 1–21.

Verganti, R. 2009. *Design Driven Innovation: Changing the Rules of Competition by Radically Innovating What Things Mean*. Harvard Business School Press.

Vicente-Lorente, J. D. 2001. Specificity and opacity as resource-based determinants of capital structure: evidence for Spanish manufacturing firms. *Strategic Management Journal*, 22 (2), 157–177.

von Hippel, E. and Fauchart, E. 2008. Norms-based intellectual property systems - the case of French chefs. *Organization Science,* 19(2), 187-201.

Walsh, V. 1996. Design, innovation and the boundaries of the firm. *Research Policy*, 25, (4), 509–529.

Yin, R. K. 2011. *Applications of case study research.* Sage.

Appendix: Interview Questions

Questions included in our Interviews

Our questions are about the decision to make design products or buy in design services. Focusing on the periods in which you have bought in design services:

6.1. For the buyer

1. What are the **drivers** of your decision to source design services from an external supplier
2. Can you please describe how decided between doing all of the design in-house and buying in design services?
3. What **challenges** have you faced in maintaining a design capability in-house (sourcing design services from an external supplier)?

   a) Follow up on each challenge identified by the interviewee – can you please explain how you have sought to address this challenge?

   b) With regard to buying design, if any of the following are nor raised by the interviewee:

      i) How do you select suppliers of design services?
      ii) How do you decide on what design services are worth?
      iii) Do you manage service contracts to ensure objectives are met? And if so how?
      iv) Do you look to ensure that you have exclusive ownership of the designs that are created for you? And if so how?

4. What are the **strategies** you have found to be effective and strategies you have found to be ineffective in managing these challenges?

   a) How does this shape the way you depend upon various forms of intellectual property protection (Patents, copyrights, trademarks, design marks, other)?

5. More generally, could you outline your experiences in having a design capability in-house (buying design) / the challenges you've encountered, strategies you employ and benefits you've gained?

6.2. For the supplier

1. What are the **drivers** of your decision to sell design services on the market?
2. Why do you sell design services?
3. Do you ever utilize your designs for your own firm? If so how do you decide between utilizing your design capabilities for the firm and selling your design capabilities as a service?
4. What are the **challenges** you have faced in selling design services to external buyers?
5. Follow up on each challenge identified by the interviewee – can you please explain how you have sought to address this challenge?

   a) With regard to selling design, if any of the following are nor raised by the interviewee:
   b) How do you recruit buyers of design services?
   c) How do you decide on what your design services are worth?
   d) Do you manage service contracts to ensure objectives are met? And if so how?
   e) How do you protect your IP during the client engagement process and throughout the project?

6. What are the **strategies** you have found to be effective and strategies you have found to be ineffective in managing these challenges?

   a) How does this shape the way you depend upon various forms of intellectual property protection (Patents, copyrights, trademarks, design marks, other)?

7. More generally, could you outline your experiences in selling design services / the challenges you have encountered, strategies you employ and benefits you have gained?

About the Authors

Associate Professor Kwanghui Lim

Kwanghui Lim is Associate Professor (Strategy) at the Melbourne Business School and Associate Director at the Intellectual Property Research Institute of Australia. He has a B.Eng. degree from the National University of Singapore (NUS) and a Ph.D. in Management from MIT. Between 2000 and 2006, he worked as an Assistant Professor at NUS where he was part of a team that developed and taught new programs linking innovation and entrepreneurship. A/P Lim's research is on how firms manage knowledge, intellectual property and scientific human capital. He has published research on post-acquisition inventor productivity (Kapoor and Lim, *Academy of Management Journal*, 2007), the effect of star and bridging scientists (Subramaniam, Lim and Soh, *Research Policy*, 2013), types of absorptive capacity (Lim, *Industrial and Corporate Change,* 2010; Lim, *Research Policy*, 2004) and `knowledge brokering' across technical domains (Hsu and Lim, *Organization Science,* in press). For details visit http://kwanghui.com.

Associate Professor Don O'Sullivan

Don O'Sullivan is Associate Professor of Marketing at Melbourne Business School. He joined the MBS faculty in 2008 from University College Cork, Ireland. His research is on the impact of marketing activities and assets on company performance. A/P O'Sullivan's research has been published in leading journals including the *Journal of Marketing*, the *Strategic Management Journal*, the *Journal of the Academy of Marketing Science*, the *International Journal of Research in Marketing* and *Marketing Letters*. He is a member of the advisory board of the Chief Marketing Officers (CMO) Council of the USA. Since 2003, he has led the Council's Marketing Performance Measurement (MPM) research program. Previously, Don was Client Services Director at a marketing services agency targeting the European technology sector. He was responsible for a range of clients including Microsoft, Siemens, Hewlett-Packard and Computer Associates. His team developed numerous international award-winning campaigns including a global ECHO award and two BusinessWeek Icon Awards.

Mr Michael R. Falk

Michael R. Falk is a doctoral student based at Melbourne Business School. Michael's doctoral work examines the strategies firms use to transact organisational routines and manage uncertainty in highly imperfect markets. He has an M.A. in Publishing and Communications and a B.A. (Honours) in Historical and Philosophical Studies from the University of Melbourne. Michael previously worked as an independent research analyst for design and technology companies including The Conversation Media Group, Inframe Media, Telsoft Pty Ltd, Workshop 3000, and Enhanced Editions in the UK. Michael has been commissioned to undertake studies on research impact and partnerships by Monash University and by the Enterprise Connect Creative Industries Innovation Centre, based at the University of Technology Sydney. He is an affiliate of the eScholarship Research Centre, Melbourne School of Government and the Victorian Eco-Innovation Lab at the University of Melbourne.