

UNCTAD Illicit Trade Forum

3rd to 4th February 2020

Room XXVI, Palais des Nations, Geneva

Creative Industries and The Informal Sector: Ukraine's Experience

Contribution
by

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The creative industries are a phenomenon of the post-industrial era. A necessary condition for their development is a high level of democratization of society, high standard of living and a saturated consumer goods market. Thus, at the beginning of the third millennium, the creative industries became an integral part of the economic systems of different countries. In this way, the creative sector changes traditional patterns of economic growth, sources of value-added and business location factors creating new workforce requirements. Within the creative industries, the basis for the development of information skills, life-long learning, research, communication skills and values, and intercultural dialogue is emerging.

The main difference between creative industries and the typical industrialization strategy is that it is based primarily on intellectual activity. According to this approach people considered not as a resource but as a capital.

Yet, the creative industries are part of the economy where the informal sector prevails. The informal sector is a segment of the shadow economy that manifests itself in authorized but not formally registered, and therefore not included in, official statistical reporting of economic activity. It is the market production of goods and services, whether legal or illegal, that avoids being detected in official GDP estimates. Sometimes, consumers of creative content have no option but to turn to the informal sector.

In the creative industries, the informal sector involves the exchange of cultural and creative goods and services that are hidden from official disclosure, including piracy and counterfeiting, i.e. the use of copyright and related rights without permission from the copyright holder. Thus, piracy refers to activities that by their nature involve commercial loss. At the present stage, as the information and computer technology develops, piracy in the creative industries may be:

- 1) physical, i.e. production of unauthorized (pirated) copies of protected material and their distribution and sale. For example, copying and distributing copies of music tracks, movies, TV shows, computer games on audio tapes or CDs;
- 2) digital, i.e. unauthorized distribution over the Internet of protected works or digital copying beyond the scope of copyright law, in particular, 95% of music downloads are illegal that have become widespread due to the development of P2P technologies. Nowadays, digital piracy is called the "plague" of the creative industries of the 21st century.

The informal sector means production of goods and services for sale and profit, primarily beyond formal arrangements. However, the informal sector cannot be regarded as criminal activity: it represents the cultural activities and content traded by creators using informal distribution channels.

Currently, about 470,000 people (or 2.8% of population) work in the creative industries in Ukraine. They bring the country about UAH 105 billion (or 4.4% of GDP). The most developed sub-sectors are media, IT services, handmade, architectural and industrial design, publishing and fashion.

The issue of copyright and intellectual property rights protection remains unresolved in the creative sector of Ukraine. Determining the number of violations in this area is very difficult since it depends on whether the right holder has filed a complaint for violation of his/her rights that, in turn, depends on his/her knowledge of legal issues. For example, the fashion industry, among

others, has an extremely low level of intellectual property protection. Copying in the fields of design and fashion has its own specificity: it is not the creation of an absolute copy – the shape, color, individual details or the overall silhouette specific to the manufacturer are copied. It is a question of borrowing certain ideas i.e. something rather subjective and ephemeral, which is difficult to prove. It is even more difficult to put this in a clear legal framework. There is no universal solution to this problem yet. Players of the Ukrainian fashion market rarely take steps to protect the design of their unique products and do not rush to assert their rights in the courts. In 2015, 269 criminal proceedings were initiated against criminal offenses in the field of intellectual property, 149 of which were related to copyright and related rights violations.

In addition, there is no term “counterfeit” in the legislation of Ukraine, instead of it terms “falsification,” “fake” etc. are used. Many counterfeit goods are sold through online stores but the legislation of Ukraine does not contain special measures to influence them.

The existence of the informal sector is extremely detrimental to the creative industries as it interferes with distribution channels, creators (artists, musicians) accept unpaid work while many of them often fall outside official regulation.

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